

CRS Issue Brief for Congress

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Transportation Issues in the 108th Congress

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Transportation Issues in the 108th Congress

SUMMARY

This issue brief identifies key transportation issues facing the 108th Congress.

Transportation Budget. The Administration requested \$54.3 billion for the Department of Transportation for FY2004, 2.5% less than comparable funding for FY2003. The House of Representatives has approved \$54.9 billion; the Senate Appropriations Committee has recommended \$58.9 billion. With the end of the fiscal year approaching, and several appropriations bills still unsettled, a Continuing Resolution is likely.

Surface Transportation Reauthorization. Authorizing legislation for the existing federal highway and transit programs will expire at the end of FY2003. Provisions in that law will shut down or significantly limit DOT's largest programs after September 30, 2003, if not amended. The Administration's proposal, the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003 (SAFETEA, H.R. 2088/S. 1072), calls for only minimal increases in program spending over the next six years, and calls for a decrease in year-over-year spending in FY2004. The committees of jurisdiction have not yet introduced their proposals; both houses want more funding than proposed by the Administration's plan. Bills to extend the programs for 5-6 months have been introduced.

Aviation Reauthorization. The authorization for key functions of the Federal Aviation Administration (FAA) will expire at the end of FY2003. The FAA's bill, the Centennial of Flight Aviation Authorization (FLIGHT-100), provides for essentially flat funding during the next four years. On June 11, 2003, the House passed H.R. 2115, Flight 100 – Century of

Aviation Reauthorization Act, which calls for spending \$58.2 billion over 4 years. The next day the Senate passed its version of H.R. 2115, as amended by S. 824, proposing spending \$43.5 billion over 3 years. Conferees reached agreement on July 24, 2003; however, opposition in both houses to aspects of the agreement have delayed its consideration.

Transportation Security. Transportation security continues to be a key policy issue for Congress. The overarching concern is what reasonable security actions can be taken in each transportation mode without excessively impeding commerce and travel. Congress continues to consider legislative proposals to strengthen aviation and surface transportation security.

Amtrak Issues. Amtrak has said it needs \$1.8 billion for FY2004. The Administration requested \$900 million; the House has approved \$900 million, while the Senate Appropriations Committee recommended \$1.3 billion. Amtrak's authorization expired at the end of FY2002; Congress is considering reauthorization. In doing so, it may consider altering the shape of the railroad, including Amtrak's long-haul routes.

Airline Industry Turmoil. The economy and world events have dramatically affected the airline industry. The airlines lost record amounts of money in 2002, which followed what had been the previous record loss experienced in 2001. Congress has proposed providing some short-term relief for the ailing airline industry.

MOST RECENT DEVELOPMENTS

On September 17, 2003, the Senate Committee on Finance passed a five-month extension of authority for trust fund expenditures on surface transportation programs (S. 1548). The bill would also make changes to Highway Trust Fund revenue sources, adding about \$2 billion a year to the Fund. The same day, the House Committee on Transportation and Infrastructure introduced two bills that would extend the authority for trust fund expenditures on surface transportation programs, one for five months (H.R. 3087), one for six months (H.R. 3088).

On September 17, 2003, the House Committee on Transportation and Infrastructure reported out a bill (H.R. 2572) reauthorizing Amtrak for 3 years (FY2004-FY2006) at \$2 billion each year, with no changes to Amtrak's structure.

On September 9, 2003, the House of Representatives passed their version of the FY2004 Transportation, Treasury, and Independent Agencies Appropriations bill (H.R. 2989) by a vote of 381-39. The bill provides \$54.9 billion for transportation programs. The major difference between the House and the Administration request was an additional \$4.4 billion for highway funding (another major difference, the deletion of the \$3.4 billion Airport Improvement Program, was the result of a technicality; the program is likely to be restored in conference).

On September 4, 2003, the Senate Committee on Appropriations ordered reported their version of the FY2004 Transportation, Treasury, and Independent Agencies Appropriations bill (S. 1589; S.Rept. 108-146). The Committee recommended \$58.9 billion for transportation programs, an 8.6% increase over the Administration request. The major difference was an additional \$4.5 billion for highway funding.

On June 11, 2003, the House passed H.R. 2115, Flight 100 – Century of Aviation Reauthorization Act, which calls for spending \$58.2 billion over 4 years. The next day the Senate passed its version of H.R. 2115, as amended by S. 824, proposing spending \$43.5 billion over 3 years. Conferees reached agreement on July 24, 2003; however, the conference report is not yet available. Opposition to several aspects of the agreement in both houses has thrown its approval into doubt.

BACKGROUND AND ANALYSIS

Introduction

This issue brief provides an overview of key issues on the transportation agenda of the 108th Congress. The issues are organized under the headings of budget; highway and transit reauthorization; aviation reauthorization; transportation security; Amtrak; airline industry financial turmoil; and environmental issues, with the author of each issue identified. Relevant Congressional Research Service (CRS) reports are cited in the text. Consult the CRS Home

Page [<http://www.crs.gov/>] or the *Guide to CRS Products*, or call CRS on (202) 707-5700 to obtain the cited reports or identify materials in other subject areas.

Department of Transportation Appropriations

Appropriations for the Department of Transportation (DOT) (Function 400 in the federal budget) provide funding to a variety of programs that include regulatory, safety, research, and construction activities. Money for over half of DOT programs comes from highway fuel taxes, which are credited to the highway trust fund. In turn, the trust fund supports two accounts: the federal-aid highway account and the mass-transit account. Aviation programs are also supported in part by fuel taxes, but rely more heavily on other user fees such as the airline ticket tax. The DOT annual appropriations also include significant monies from Treasury general-fund revenues.

Table 1 shows funding for FY2003, as well as the FY2004 amounts proposed by the Bush Administration and Congressional action to date.

Table 1. Department of Transportation Appropriations*
(for selected agencies, in millions)

Agency	Enacted FY2003	Requested FY2004	House Passed	Senate Committee	Enacted FY2004
Federal Highway Administration	32,409	30,225	34,579	34,768	
Federal Aviation Administration	13,510	14,007	**10,600	13,971	
Federal Transit Administration	7,179	7,226	7,231	7,305	
Federal Railroad Administration	1,261	1,089	1,087	1,568	
National Highway Traffic Safety Administration	434	665	435	301	
Federal Motor Carrier Safety Administration	305	447	474	483	
Maritime Administration	230	219	219	228	
Office of the Secretary	173	177	159	172	
Office of the Inspector General (OIG)	55	55	55	56	
Surface Transportation Board (STB)	18	18	18	18	
Budgetary Resources Net Total	55,674	54,266	54,940	58,947	

Source: Figures in **Table 1** are drawn from the tables at the end of the appropriations committees' reports (H.Rept. 108-243; S.Rept. 108-146). Due to differing treatments of offsets, rescissions, and the structure of appropriations bills, the figures will at times differ from those in the Administration's Budget Request. Some figures include offsetting collections. Enacted FY2003 figures reflect the 0.65% across-the-board rescission.

* The United States Coast Guard and the Transportation Security Administration were included in the DOT appropriations bill through FY2003; they were transferred to Department of Homeland Security during FY2003 (P.L. 107-296). Since they are no longer included in DOT's appropriation, their FY2003 numbers are omitted from this table.

**The grants-in-aid to airports program, for which the House Committee on Appropriations had recommended \$3.425 billion, was eliminated on a point of order during the House floor debate on H.R. 2989. It is expected that this program will be restored during conference.

The Administration requested \$54.3 billion for DOT for FY2004, 6% more than the comparable amount requested for FY2003¹, and 3% less than the comparable amount enacted

¹ The FY2003 DOT appropriation included the Transportation Security Administration and the
(continued...)

for FY2003. The major difference between the FY2003 level and the Administration's FY2004 request is a 7% reduction in funding requested for the highway program. On September 9, 2003 the House of Representative approved their version of the FY2004 Transportation, Treasury, and Independent Agencies appropriations bill (H.R. 2989). The House provided \$54.9 billion in transportation spending. The major difference was an increase of \$4.4 billion in highway funding; the grants-in-aid to airports program, for which the House Committee on Appropriations had recommended \$3.425 billion, was eliminated due to a procedural point, and is likely to be restored in conference. On September 8, 2003 the Senate Committee on Appropriations reported out the Senate's version of the FY2004 Transportation, Treasury, and Independent Agencies Appropriations bill (S. 1589). The Committee recommended \$58.9 billion for transportation programs, 8.6% more than the Administration requested. The major difference was an increase of \$4.5 billion in highway funding. For more information see CRS Report RL31808, *Appropriations for FY2004: Transportation, Treasury, Postal Service, Executive Office of the President, General Government, and Related Agencies*. (CRS contact: D. Randy Peterman)

Surface Transportation Reauthorization

Highway and Transit Program Reauthorization Issues

Authorizing legislation for the existing federal highway, highway safety, and transit programs will expire at the end of FY2003. Reauthorization of these programs is under consideration in the 1st Session of the 108th Congress. The Transportation Equity Act for the 21st Century (TEA-21)(P.L.105-178 & P.L. 105-206) provided for a dramatic increase in funding for federal surface transportation programs. This was in large part the result of a successful effort to link the revenue stream for the highway trust fund to significant increases in spending for the highway, highway safety, and transit programs. The total TEA-21 authorization was about 40% more than the amount that had been authorized in the previous 6-year program authorization. Further, a mechanism created by TEA-21, Revenue-Aligned Budget Authority (RABA), has provided the program with an additional \$9.1 billion over TEA-21's 6-year life.

From the public's perspective, the surface transportation reauthorization is taking place against the backdrop of growing concern about congestion and sprawl in urbanized areas, and increased concern about maintaining access to the national transportation system in rural areas. The congressional debate that is taking place as part of the highway and transit program reauthorization process in the 108th Congress is shaping up primarily as a debate about money. Given the large increase in funding made available by TEA-21, there appears

¹ (...continued)

United States Coast Guard, which were transferred to the Department of Homeland Security during FY2003 and are not included in DOT's FY2004 appropriation request; the FY2003 request did not include the Maritime Administration, which is included in DOT's FY2004 appropriation request. The Administration's FY2004 request is 14% more than its original FY2003 request, due to the impact the Revenue-Aligned Budget Authority (RABA) provision had on FHWA's FY2003 authorized funding level. Congress set the FY2003 RABA adjustment to \$0, which effectively increased the amount of funding the Administration's requested for FHWA.

to be an expectation in some quarters that the reauthorization under discussion should also provide for a large increase in funding. Much of the lobbying in preparation for reauthorization is predicated on the belief that some significant level of new funding can be identified for the highway, highway safety, and transit programs. Given the existing state of the economy and concerns about the costs associated with the war on terrorism, the war with Iraq, and the cost of Iraq's reconstruction, such a conclusion, however, is far from foregone. The Administration, in fact, went on record against major spending increases with its FY2004 budget submission and its proposed reauthorization legislation: the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003 (SAFETEA).²

The money question aside, there appears to be very little interest in making major changes to the overall structure of the highway, highway safety, and transit programs. Rather, the interest appears to be in tweaking these programs to allow spending for some additional activities and perhaps adding some new stand-alone programs or consolidating several traffic safety programs into a single program. Among the issues likely to be considered are: allowing states greater flexibility in how they use their transportation funds; retention of the existing highway trust fund funding framework established by TEA-21; financial assistance for physical infrastructure security; streamlining of environmental evaluations required by the project approval process; a new categorical grant program for highway safety; and an increased focus on reducing drunk driving and increasing seat belt use.

In May 2003, the Bush Administration released its reauthorization proposal, SAFETEA, introduced by request as H.R. 2088 and S. 1072. The proposal, as expected, calls for minimal increases in program spending over the next six years; it also calls for a decrease in year-over-year spending in FY2004. The bill makes some programmatic changes, for example, by creating a consolidated highway-safety grant program and by establishing a new program for ready-to-go highway and transit projects, but otherwise adopts the existing TEA-21 structure. The Administration's proposed six-year spending level of \$247 billion is well below the stated goals of the leadership of the House Transportation and Infrastructure Committee, \$375 billion, and the leadership of the Senate Environment and Public Works Committee, \$311 billion. As a result, it is unlikely that the Administration's bill will receive serious congressional consideration. Rather, elements of the Administration's proposal will probably be incorporated into the respective House and Senate bills once they are introduced. It now appears that Congress will be unable to complete reauthorization legislation during this session. Discussions are currently underway over what might be included in either 5 or 6 month extension legislation that would keep highway and transit programs operating until early next year. On September 17, 2003 the Senate Committee on Finance approved a bill extending authority for trust fund expenditures by surface transportation programs (S. 1548). The bill would also raise the tax on ethanol by 5.2 cents-per-gallon, to the same level as the tax on gasoline (18.4 cents-per-gallon), and would eliminate the transfer of 2.5 cents-per-gallon of the ethanol tax to the general fund. These two changes are estimated to increase revenues to the Highway Trust Fund by \$2 billion annually. For more information see: CRS Report RL31665, *Highway and Transit Program Reauthorization*. **(CRS contact: John Fischer)**

² [http://www.fhwa.dot.gov/reauthorization/safetea_bill.htm]

Congestion. There are few individuals living near major urbanized areas who could honestly claim to be unaffected by congestion-caused delays. In the last several decades there have been numerous attempts to reduce traffic congestion, primarily at the state, local, and regional levels. DOT has often provided funding for specific projects, and has offered the expertise of its employees in the battle against congestion. The crux of federal transportation spending, however, has been and continues to be aimed at overall infrastructure improvement, while air quality improvement, congestion improvement, and other issues essentially have been secondary goals. There is a sense that there is no one good solution to congestion problems and that successful congestion reduction strategies require multiple remedies. New infrastructure alone, at the level currently being constructed, has not been able to stay ahead of the congestion problem. Efforts aimed at alleviating congestion by changing individual travel behaviors have also been largely unsuccessful. During the 108th Congress' reauthorization discussion, congestion issues can be expected to play a major role. **(CRS contact: John Fischer)**

Transit Reauthorization. The Administration's reauthorization proposal, SAFETEA, would make at least three significant changes to the federal transit program. First, it would realign FTA programs into three groups: Formula Grants, Major Capital Investments, and State-Administered Programs. The stated purpose is to provide transit agencies more flexibility with their federal funding (in part through the redistribution to formula programs of the Bus and Bus Facilities Program's \$607 million in funding, which was completely earmarked in FY2003). Second, it would lower the maximum federal share of costs for New Starts projects from the current 80% to 50%; this would allow FTA to provide grants from the available New Starts funding to more projects. Third, the portion of FTA's authorized funding that comes from general-fund appropriations—about 18% under SAFETEA—would no longer be guaranteed as it was under TEA-21. This could lead to less funding for FTA than authorized, as well as introducing uncertainty into the financial planning of transit-funding recipients; as, prior to the TEA-21 funding guarantee, annual transit appropriations were often less than the amount authorized.

DOT has reported that due to certain provisions in TEA-21, FTA (and other DOT administrations) will no longer be able to make grants to states after September 30. Bills to extend FTA programs' authority for an additional 5-6 months are being considered by Congress. For more information, see CRS Report RL31854, *Transit Program Reauthorization in the 108th Congress*. **(CRS contact: D. Randy Peterman)**

Environmental Issues. The use of federal highway funds to mitigate the environmental impacts of surface transportation will be a likely topic of discussion in the reauthorization of federal surface transportation programs. The most recent authorization, TEA-21, provided a total of \$9 billion over six years for reducing air pollution from highway travel. Of this amount, about \$8 billion was authorized for the Congestion Mitigation and Air Quality Improvement program (CMAQ) to assist states in complying with federal air quality standards, and \$1 billion was authorized for clean fuel buses. In addition to addressing air quality needs, TEA-21 expanded eligibility under the Surface Transportation Program to allow the use of federal highway funds for mitigating water pollution from highway runoff. The law also authorized funding for environmental research and the development of advanced vehicle technologies that offer environmental benefits. Of these activities, the CMAQ program is likely to receive the most attention during reauthorization, due to questions that have been raised as to whether it has made a significant impact on state

compliance with federal air quality standards. Proposals to enhance the program's effectiveness, or to shift its focus to reducing traffic congestion in general, may be considered.

The Administration's reauthorizing proposal, SAFETEA, would retain the basic structure of the CMAQ program and continue its focus on reducing emissions from motor vehicles. The bill would increase the program's funding level to nearly \$8.9 billion over the next six years, about \$740 million above the previous authorization. Additional provisions would expand eligibility for CMAQ projects, revise the program's funding formula to ensure that states with areas that do not meet stricter federal air quality standards receive greater funding, and require further study of the program's effectiveness in order to identify which types of projects offer the greatest potential for reducing emissions. The bill also would provide tax benefits and other incentives that are related to air quality, extend the time frame for a state to demonstrate that its transportation plan conforms to its air quality plan, expand project eligibility for mitigating water pollution, and authorize funding for new environmental research activities. For further discussion, refer to CRS Report RL32057, *Highway and Transit Program Reauthorization: Environmental Protection Issues and Legislation*. (CRS contact: David Bearden)

In addition to specific programs, another issue that may arise during reauthorization is whether to take further legislative action to streamline the environmental review process for highway and transit projects. Some Members of Congress have expressed disappointment that the Secretary of Transportation has not finalized regulations to implement the streamlining requirements of TEA-21, and proposals to establish a statutory process to streamline project reviews may be subject to debate. SAFETEA would allow greater participation of project sponsors and states in coordinating the review process, and would provide states with the authority to make certain decisions necessary for project approvals. SAFETEA also would amend current statutory requirements that specify the conditions under which public parks, recreational lands, wildlife and waterfowl refuges, and historic sites may be used for a transportation project. While some argue that these changes would help to increase the pace of project approvals, others believe that environmental protections might be compromised. For further discussion, refer to CRS Report RL32032, *Streamlining Environmental Reviews of Highway and Transit Projects: Analysis of SAFETEA and Recent Legislative Activities*. (CRS contact: Linda Luther)

Safety Issues. During the 108th Congress, debate over the purpose, structure, and funding amounts for various highway safety programs is likely to be conducted within the larger context of federal surface transportation reauthorization. With federal highway and traffic safety programs set to expire at the end of FY2003, various interest groups seek additional funding to improve highway infrastructure and operations, increase seat-belt use rates, reduce impaired driving, strengthen driver licensing, and improve commercial motor vehicle safety. Some groups seek new safety requirements or fundamental changes in federal transportation safety programs. In the SAFETEA, the Administration proposes major changes in various federal grant programs that directly affect the amount of and conditions under which funds from the Federal Highway Trust Fund are provided to the states. Key challenges will be finding additional funds to increase federal support for safety, and evaluating the costs and benefits of changes in federal policy. Debate is also proceeding on the reauthorization of federal railroad safety law, including funding for the safety programs

of the Federal Railroad Administration (FRA). Issue areas can be grouped into five categories:

Infrastructure. Billions of dollars derived from federal-highway categorical grants are used each year by state and local governments to improve the design, throughput, and overall performance of the highway infrastructure. Collectively, these investments are intended to improve safety. For example, the authorization for the Surface Transportation Program (STP) found in Title I of the Transportation Equity Act for the 21st Century (TEA-21), as amended, includes mandatory set asides to eliminate hazards (such as by installing barriers and guard rails) and to improve grade crossings (such as by installing signals and signs). Congress will decide the authorization levels for various federal-highway categorical grants, the amount (if any) of set asides for safety, and whether a separate categorical grant for safety is established. In SAFETEA, the Administration proposes to eliminate the separate STP safety set aside and to create a separate, apportioned program called the Highway Safety Improvement Program. This program is to address safety problems and opportunities on all roadways in a state and focus resources on the greatest needs as identified through crash data analysis.

Traffic Safety and Associated Grants. Congress will likely decide how much funding to authorize for Section 403 of Title 23 of the U.S. Code, which funds the National Highway Traffic Safety Administration (NHTSA) driver/passenger (behavioral) program, and whether funding emphasis and priority setting regarding these activities should be changed. TEA-21 reauthorized two traffic-safety grants, and authorized six new grant programs. In retrospect, many state officials maintain that TEA-21 authorized too many traffic-safety grants to administer effectively. Not surprisingly, the states seek a unified grant approach with financial rewards for a state's performance. Congress is debating how to structure such a unified traffic-safety incentive program, perhaps combining the existing Section 402 (state and community grants), and alcohol countermeasures and occupant protection enhancement grants. In SAFETEA, the Administration proposes a limited consolidation of the existing grant programs and requests funding for two new grant programs: one for emergency medical services and one for state traffic record systems. The Senate Committee on Commerce, Science, and Transportation has reported out a bill (no number yet assigned) that authorizes new grant programs to combat impaired driving and to encourage the states to adopt and enforce primary safety belt laws and to increase safety-belt use rates.

Truck and Bus Safety. Key concerns include funding levels for various motor carrier safety enforcement and regulatory activities conducted by the Federal Motor Carrier Safety Administration (FMCSA); grants to enhance the efforts of state enforcement agencies and to improve the Commercial Driver Licensing (CDL) programs conducted by the states; and changes to federal regulations regarding motor carrier safety. Attention is focusing on the issues of: how the Motor Carrier Safety Assistance Program could be made a more effective federal/state partnership; how to ensure that CDL grant funds are effectively used; and whether funds administered by the FMCSA should focus more on the role of non-commercial drivers affecting commercial motor vehicle safety. The Senate Commerce Committee bill reauthorizes funding for both the federal and state motor carrier safety programs, and creates a new program to improve state commercial driver licensing activities.

Intelligent Transportation Systems (ITS) and Surface Transportation Research. Advances in safety depend partly on investments made to develop and test new technologies to “push the envelope.” ITS crash avoidance technologies offer much promise, but substantial costs and lead times are generally involved before widespread deployment. Also, debate is likely to focus on the funding level and purposes of the federal surface transportation research program and whether to authorize a new Strategic Highway Research Program financed by an administrative takedown off of the federal aid program, and managed by the National Research Council/ Transportation Research Board. In SAFETEA, the Administration is proposing increased funding for both ITS and highway research and development and technology deployment activities.

A recent NHTSA study, estimating the costs to society of all traffic crashes at over \$230 billion per year, raises questions of whether a sufficient amount of federal funds are allocated to promote traffic safety and whether existing funds are being wisely allocated. Requests for additional funding to enhance safety are likely to be considered within the context of the financial status of the Federal Highway Trust Fund, numerous other requests for alternative use of these funds, and the desire of the states to gain maximum flexibility in the use of federal funds. **(CRS contact: Paul Rothberg)**

Federal Rail Safety Program Reauthorization. The Senate Committee on Commerce, Science and Transportation reported out of Committee S. 1402, The Federal Railroad Safety Improvement Act, which would reauthorize federal rail safety activities for FY2004-2008. The bill seeks to improve the information contained in the a national highway-rail grade crossing inventory, direct the FRA to develop a plan for a joint initiative with the states to reduce the number of public and private highway-rail grade crossings by 1 percent per year in each of the succeeding 10 years, create a working group to consider how to improve fatigue management for railroad employees subject to the hours of service law (title 49, chapter 211); and require the Department of Transportation (DOT) and the Department of Homeland Security (DHS) to execute a memorandum of understanding regarding railroad security matters. **(CRS contact: Paul Rothberg)**

Aviation Reauthorization

The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (FAIR21 or AIR21; P.L. 106-181) provides authorization for key functions of the Federal Aviation Administration (FAA) through FY2003. Consequently, the 108th Congress has been engaged in the process of drafting and debating legislation to reauthorize the FAA and related aviation programs beyond FY2003.

On June 11, 2003, H.R. 2115, Flight 100—the Century of Aviation Reauthorization Act, was passed by the House of Representatives. The House bill proposes a total budget of \$58.2 billion over four years for airport improvements, facilities and equipment, and FAA operations and maintenance. The bill does not include provisions for FAA’s research, engineering, and development function, which is under the jurisdiction of the House Science Committee, Subcommittee on Space and Aeronautics. On June 12, 2003, the Senate passed its version of H.R. 2115, striking out the House language and substituting the amended language of S. 824. The Senate proposal provides for a three-year reauthorization totaling

\$43.5 billion, for airport improvements; facilities and equipment; FAA operations and maintenance; and research, engineering, and development. While the Senate proposal provides somewhat lower funding levels than the House, both the Senate and the House bills would provide more funding than the Administration's request of \$57.3 billion over four years. On July 25, 2003, 'Vision 100--Century of Aviation Reauthorization Act (H.Rept. 108-240) was reported out of conference. The conference bill would provide \$59.2 billion over 4 years for airport improvements, facilities and equipment, FAA operations and maintenance (O&M), and research, engineering, and development (R, E, & D).

Controversy over a provision protecting certain air traffic control functions from privatization may be a focal point during debate over the FAA reauthorization conference bill. The provision would protect most air traffic control functions from privatization through fiscal year 2007, but would permit FAA to keep its existing contract tower program and move forward with a plan to expand this program. Unlike the Senate-passed bill, the privatization protections in the conference bill would not prevent outsourcing of maintenance and certification of air traffic systems and flight service station positions, and would permit expansion of the contract tower program. Also, the conference bill limits the protections on privatization to the next 4 years, whereas the language in both the House- and Senate-passed bills would have made these protections permanent.

For a more in-depth discussion of issues related to FAA reauthorization, see CRS Issue Brief IB10121, *Reauthorization of the Federal Aviation Administration*. (**CRS Contacts: Bart Elias, John Fischer, and Robert Kirk**).

Transportation Security

Since September 11, 2001, transportation security has emerged as a key policy issue for Congress. The 108th Congress is likely to assess a number of proposed security measures and determine if the proposals increase security without excessively impeding commerce and travel. On November 19, 2001, President Bush signed the Aviation and Transportation Security Act (ATSA, P.L. 107-071). The Act established a new Transportation Security Administration (TSA) that is responsible for the security of all modes of transportation, passenger and cargo. On November 25, 2002, President Bush signed the Homeland Security Act of 2002 (P.L. 107-296). The Act creates a new cabinet-level Department of Homeland Security which will consolidate the antiterrorist activities of 22 federal agencies and transfer the TSA and the Coast Guard from the DOT to the new department. (See CRS Report RL31549, *Department of Homeland Security: Consolidation of Border and Transportation Security Agencies*).

ATSA established a timetable for the federalization of security functions at airports with commercial-passenger air service. These functions include screening of passengers, carry-on and checked baggage, cargo, mail, and other articles carried aboard passenger aircraft. Other airport security enhancements under ATSA involve improved airport-perimeter security and improved secured-area access control. ATSA also provided for the transfer of a greatly expanded Federal Air Marshal Service to the TSA, and mandated deployment of federal air marshals on every flight that is judged to present a high security risk. ATSA required strengthening of cockpit doors, further limited access to the cockpit, and provided for security training for flight and cabin crew. Over 55,000 federal screeners were hired by TSA

and are in place at all 432 passenger airports, including five airports participating in a pilot program using federally trained private screeners. TSA is currently downsizing its screener workforce by 6,000 employees and reallocating screeners to better match checkpoint passenger volume at the various airports. Under ATSA, airports may elect to return to a system utilizing private security screeners on November 19, 2004.

The Homeland Security Act of 2002 contained provisions for training and deputizing volunteer pilots of commercial passenger aircraft as federal flight deck officers, allowing them to carry firearms and use force, including lethal force, to protect the flight deck. The initial class was trained in April 2003, and 44 pilots were deputized as federal flight deck officers. TSA was appropriated \$8 million for the program in FY 2003, and is requesting \$25 million to continue the program in FY 2004. While the program is currently limited to pilots of passenger aircraft, legislation (H.R. 765; S. 516; H.R. 1049; S. 165) has been introduced that would allow cargo pilots to participate in the program. The Homeland Security Act of 2002 also established a requirement for crew training in self-defense and cabin security, and for completion of a study examining the benefits and risks associated with arming cabin crew with non-lethal weapons. Further provisions under the Homeland Security Act of 2002 allow the TSA to implement interim, alternative baggage-screening methods at airports unable to meet a December 31, 2002, deadline for deployment of explosive detection systems and to establish a plan for compliance with requirements to screen all checked baggage with explosive detection systems no later than December 31, 2003.

During the first session of the 108th Congress, attention is expected to focus on oversight of the aforementioned aviation security initiatives. Key issues include the comparative effectiveness of the federal aviation security workforce and the effectiveness and efficiency of baggage and cargo screening. Additionally, implementation of in-flight security measures, especially the Federal Flight Deck Officer program, will likely be the subject of congressional scrutiny. Legislation to expand aviation security, such as the screening and inspection of cargo transported on all-cargo aircraft as well as passenger aircraft, security measures at air cargo shipping facilities, air cargo operations areas, and air cargo acceptance areas, has been passed by the Senate (S. 165) and similar legislation has been introduced in the House (H.R. 1103). Other legislation (H.R. 2455; H.Amdt. 183 to H.R. 2555) would require the screening of all cargo placed on passenger aircraft.

Another topic under consideration is improving the verification and validation of passenger and employee identification. For example, The Aviation Biometric Badge Act (H.R. 115) introduced by Rep. Hefley would require biometric identification of airport security screeners. A related issue is the use of passenger background screening and concerns over the protection of individual privacy and civil liberties while using methods to identify passengers who may pose security risks. Legislation under consideration would require reviews assessing the impacts of the next-generation Computer Aided Passenger Pre-screening (CAPPS II) program on passenger privacy and civil rights and assessing the efficiency and security of the system being developed (see H.R. 2555 as reported in the Senate; H.R. 2115 as agreed to by the Senate; S. 165).

While current regulations require background checks of aliens seeking training in aircraft weighing more than 12,500 pounds, legislation introduced by Senator Bill Nelson (S. 236; Amendment to S. 165) seeks to require background checks for aliens seeking flight

training regardless of aircraft weight, but would waive this requirement for applicants who are already qualified to fly aircraft weighing more than 12,500 pounds. Congress may also address the use of temporary flight restrictions to protect airspace, particularly over stadiums during sporting events and other public assemblies, and in the vicinity of certain locations and special events. A provision in the FY2003 consolidated appropriations bill (P.L. 108-7) extends restrictions on stadium overflights during major events for a period of one year and places tighter controls on the issuance of waivers to this restriction.

Legislation (H.R. 580; S. 311) has also been introduced that seeks to protect U.S. airliners from terrorist missiles by installing missile countermeasure systems on aircraft, and in the interim deploying National Guard and Coast Guard Units to patrol areas near airports. A provision in S. 165 seeks a study of the shoulder-launched missile threat and recommendations from the Secretary of Homeland Security. The House-passed Homeland Security appropriations bill (H.R. 2555; H.Rept. 108-169) identifies \$60 million to develop and evaluate an anti-missile device for commercial aviation, an amount identified for developing this technology in the DHS program plan ordered by the Emergency Wartime Supplemental Appropriations Act of 2003 (P.L. 108-11; H.Rept. 108-76). (See CRS Report RL31969, *Aviation Security: Issues Before Congress Since September 11, 2001* CRS Report RL31151, *Aviation Security Technology and Procedures: Screening Passengers and Baggage*; CRS Report RL31150, *Selected Aviation Security Legislation in the Aftermath of the September 11 Attack*; and CRS Report RL31741, *Homeland Security: Protecting Airliners from Terrorist Missiles*) **(CRS contact: Bart Elias, Aviation; Dan Morgan, Security Technology)**

Surface Transportation Security

World wide, roughly one-third of terrorist attacks target transportation systems; the most common transportation mode attacked is public transit. The effectiveness of transit depends on ease of access. As a result, security measures applied in aviation cannot be easily applied to transit. Likewise, the many miles of rail, highway, and pipeline networks are impossible to guard thoroughly. Of particular concern are the daily shipments by rail and truck of hazardous materials (especially flammable and poisonous gases). The overland crossings with Canada and Mexico are also a concern.

The FY2003 Consolidated Appropriations Resolution (H.J.Res. 2/P.L. 108-7) provides \$244.8 million to the Transportation Security Administration for maritime and land security activities, including \$25 million for trucking industry security grants and \$10 million for intercity-bus security grants. Among the major concerns regarding rail security are the rail tunnels leading to the train stations in New York City, Washington, DC, and Baltimore. The National Defense Rail Act (S. 104/H.R. 2726) would provide funds for improvements to these tunnels, as well as for an assessment of security risks in rail transportation. The Over-the-Road Bus Security and Safety Act of 2003 (H.R. 875/S. 929) would authorize the Secretary of Transportation to make grants to private bus operators for extraordinary security and safety improvements; S. 929 has been passed by the Senate. **(CRS contacts: D. Randy Peterman, Transit and Passenger Rail; John Frittelli, Freight Railroads; Paul Rothberg, Highways and Pipelines)**

Ports and Maritime Security

Government leaders and security experts are concerned that the maritime transportation system could be used by terrorists to smuggle a weapon of mass destruction into the United States. Experts have found ports to be vulnerable to terrorist attack because of their size, easy accessibility by water and land, proximity to urban areas, and the tremendous amount of cargo that is typically transferred through them.

On November 14, 2002, Congress passed the Maritime Transportation Security Act of 2002 (MTSA, P.L. 107-295). The Act creates a U.S. maritime security system and requires federal agencies, ports, and vessel owners to take numerous steps to upgrade security. Some of the major provisions include developing standardized port security plans; conducting vulnerability assessments at each port; creating port security committees at each port to plan and oversee security measures; and establishing background checks and access control to sensitive areas for port workers. A dispute over how to pay for the cost of enhancing seaport security was resolved by eliminating controversial user-fee provisions from the conference report. The 108th Congress is debating the appropriate balance between taxpayer dollars for port security and investment from the private sector.

Policymakers also are debating whether initiatives to fill gaps in port security are proceeding at sufficient pace. Implementation of the port security provisions in MTSA are also undergoing review. Some of the broader policy issues likely to be debated include finding the best way to strike a balance between port security and port, or trade, efficiency. For example, what is the best way to ensure that cargo containers are not used to smuggle terrorist weapons or terrorists themselves without disrupting the flow of legitimate commerce? Another challenge is finding the right balance between standardized versus site-specific security measures. A key question is what elements of seaport security might be best addressed through a standardized, top-down approach, and what elements of seaport security might be best addressed through a tailored, bottom-up approach.

Congress is also likely to consider how much of the potential solution lies in international actions and the implications these actions may have for U.S. agencies and port operations. The International Maritime Organization recently adopted international standards for vessel and port security and the World Customs Organization is working towards adopting standards for cargo security. Improving seaport security will require effective cooperation between all levels of government—federal, state, and local—as well as between government agencies and private sector entities. The proper division of roles between all of these interests and how to ensure their cooperation is an important issue for U.S. policymakers. (See CRS Report RL31733, *Port and Maritime Security: Background and Issues for Congress.*) (CRS contact: John Frittelli)

Amtrak Issues

The Bush Administration requested \$900 million for Amtrak for FY2004; Amtrak has requested \$1.8 billion in federal capital and operating subsidies for FY2004, with \$1.04 billion in support for capital needs and \$768 million for operations. The Administration's request is seen as sending a message that Amtrak must be reformed; the DOT Inspector

General has testified that Amtrak cannot survive FY2004 on \$900 million. In FY2003 the Administration requested \$521 million for Amtrak and refused to support any increase unless Amtrak was reformed; Congress provided \$1.1 billion for Amtrak for FY2003 without major reforms (see below for changes made). The House of Representatives has approved \$900 million for Amtrak for FY2004 (H.R. 2989); the Senate Committee on Appropriations has recommended \$1.346 billion (S. 1589).

As required by its FY2003 appropriation, Amtrak submitted a 5-year Strategic Plan to Congress on April 25, 2003. This plan would maintain the current network and begin to address Amtrak's estimated \$6 billion backlog of maintenance. The plan calls for an average of \$1.6 billion annually in federal assistance to Amtrak over FY2004-FY2008.

In a change of policy, for FY2003 Congress directed (in P.L. 108-7) that Amtrak funding not go directly to Amtrak; instead, its funding is allocated to the Secretary of Transportation, who will make quarterly grants to Amtrak. P.L. 108-7 also provides for tighter control over Amtrak's activities by requiring Amtrak to submit capital and operating plans to Congress and the Secretary; Amtrak may not spend money on projects not in the plans, and must submit changes to the plans to Congress, with justifications.

Like virtually all passenger rail operations around the world, Amtrak does not earn enough revenue to cover its costs. Amtrak revenues are around \$2 billion a year, but it spends nearly \$3 billion a year. In addition, it has nearly \$5 billion in debt and capital lease obligations, and an estimated \$6 billion in backlogged capital maintenance needs. The Amtrak Reform Council and the DOT Inspector General's Office have both estimated that Amtrak, as currently structured, requires around \$1.5 billion in operating and capital support annually, a considerably higher level of funding than Amtrak has ever consistently received.

Amtrak's authorization expired at the end of FY2002. In June 2002, DOT Secretary Mineta proposed a set of principles for Amtrak reform, including the elimination of federal operating support; separation of ownership of the Northeast Corridor infrastructure from train operations; introduction of competition for certain routes; and shared responsibility for passenger rail financing between the federal government and the states. These principles are reflected in the Administration's Amtrak reauthorization legislation, S. 1501, which would split Amtrak into an operating company and an infrastructure company, phase out federal operating support for passenger rail services, provide federal matching funds for state investments in passenger rail capital improvements, and turn over responsibility for planning and managing passenger rail service to the states, who would contract with Amtrak or, eventually, perhaps other operators, to provide passenger service.

Other reauthorization legislation introduced in the 108th Congress includes legislation that would authorize funding for Amtrak as it currently exists and legislation that would restructure Amtrak. In the first category are S. 104/H.R. 2726, which would authorize around \$2.8 billion annually for Amtrak, with detailed allocations of that funding, and \$1.55 billion annually to the DOT for high-speed rail planning and implementation grants to states; H.R. 2572, which would authorize \$2 billion annually for Amtrak for FY2004-FY2006; and the Senate Surface Transportation Safety Reauthorization bill (no bill number), which includes an amendment that would authorize \$2 billion annually for Amtrak over FY2004-FY2009. In the second category are S. 1501, the Administration's proposal for restructuring Amtrak and passenger rail services, which contains no authorization amounts; and S. 1505,

which would authorize \$2 billion annually for Amtrak, divide Amtrak's infrastructure from its operations, create a federal passenger rail office with responsibility for the passenger rail system, and authorize \$48 billion in tax-credit bonds to finance capital improvements to increase the speed of passenger rail trains throughout the nation. H.R. 2572 and the Senate Surface Transportation Safety Reauthorization bill have been passed out of committee (the Senate bill has not yet been filed). For more information, see CRS Report RL31743, *Amtrak Issues in the 108th Congress*. (CRS contact: D. Randy Peterman)

Airline Industry Financial Turmoil

The March/April War in Iraq, the outbreak of a virus known as Severe Acute Respiratory Syndrome (SARS) (now in apparent remission), and concerns about the reconstruction of Iraq, have dramatically affected the airline industry. Air travel in the spring of 2003 dropped significantly according to the Air Transport Association (ATA). With the Iraq war over, there are some hopeful signs that traffic is returning, but no one in the industry is expecting a full traffic recovery in 2003. All of these developments are happening against the backdrop of the events of September 11th, which continues to have a huge negative impact on the industry. The airlines lost record amounts of money in 2002, which followed what had been the previous record loss experienced in 2001.

Among major airlines, only Southwest was profitable in 2002, and Southwest is the only major carrier believed to have a shot at profitability in 2003. The industry's second largest airline, United, is operating in receivership; and the possibility exists that other large carriers could find themselves in this position in the future. There is, therefore, considerable concern that the airline industry as we have known it over the last few years is likely to go through a period of major structural change, which has yet to fully play out. Throughout this period the airline industry has come to Congress seeking assistance, by way of tax relief or other means, in order to keep flying.

After September 11th, Congress and the Bush Administration moved swiftly to provide the airline industry with \$15 billion in federal financial support (Air Transportation Safety and System Stabilization Act (Stabilization Act)(P.L. 107-42). The first \$5 billion provided direct aid to pay for industry losses associated with the results of the September 11th attacks. The vast majority of these funds have already been distributed to the airlines (a listing of airlines receiving funds is available from the Department of Transportation at [<http://ostpxweb.dot.gov/aviation>]. A second source of funding, access to \$10 billion in government-backed loans, required approval by the newly created Air Transportation Stabilization Board (ATSB). Thirteen airlines applied for the loan program. The majority received some form of assistance; but the largest single applicant, United, was denied a loan. Of the \$10 billion authorized by this program only about \$1.5 billion has been committed.

In the FY2003 Emergency Wartime Supplemental (P.L. 108-11)(April 12, 2003), Congress has again provided the industry with short term relief. Specifically, the Act provides \$2.3 billion in immediate assistance to reimburse air carriers for security expenses (Transportation Security Administration press release: www.tsa.gov/public/display?theme=44&content=230). It also provides the air carriers with an additional \$100 million to reimburse them for expenses involved in hardening cockpit doors, and gives the industry a four-month tax holiday beginning June 1, 2003, during which time passenger and airline

security fees will not be collected. Notwithstanding this assistance, there are many observers who believe that this aid will be insufficient to keep all U.S. airlines solvent. Rather it is the hope that this assistance will buy the industry time and that an economic recovery later this year will restore the industry to some semblance of health. **(CRS contact: John Fischer)**

Environmental Issues

Conformity

Under the Clean Air Act, areas that have not attained any of the six National Ambient Air Quality Standards established by EPA must develop State Implementation Plans (SIPs) demonstrating how they will reach attainment. As of December 2002, 107 areas with a combined population of 97.8 million people were subject to the SIP requirements. Section 176 of the Clean Air Act prohibits federal agencies from funding projects in these areas unless they “conform” to the SIPs. Specifically, projects must not “cause or contribute to any new violation of any standard”; “increase the frequency or severity of any existing violation”; or “delay timely attainment of any standard.” Because new highways generally lead to an increase in emissions, both the statute and regulations require that an area’s Transportation Improvement Program (TIP) provide a new demonstration of conformity no less frequently than every three years. Highway and transit projects cannot receive federal funds unless they are part of a conforming TIP.

As a result of growth of emissions from SUVs and other light trucks, greater than expected increases in vehicle- miles traveled, recent court decisions that tightened conformity rules, and the scheduled implementation of more stringent air quality standards in 2004, the impact of conformity requirements is expected to grow in the next several years. Numerous metropolitan areas will face a cutoff of highway and transit funds unless they impose sharp reductions in vehicle and industrial emissions. The Clean Air Act provides no authority for waivers or grace periods; and, during a conformity lapse, only a limited set of exempt projects (mostly safety-related or replacement and repair of existing transit facilities) can be funded. The rules do not allow funding of new projects that might reduce emissions, such as new transit lines. These factors, as well as the need for better coordination between the TIP and SIP planning cycles, may be raised by those seeking to amend the conformity provisions. Modifying conformity would be controversial, however, since it provides one of the most effective tools for ensuring that transportation and air quality planning are coordinated. Conformity provisions have been introduced in the Administration’s highway and transit legislation (H.R. 2088 / S. 1072); Section 6001 of the bill would require conformity demonstrations every five years instead of every three, and would shorten the planning horizon over which conformity must be demonstrated to 10 years in most cases, instead of the current 20 years. **(CRS Contact: Jim McCarthy)**

Diesel Engines and Fuel

New emission standards for highway diesel engines took effect October 1, 2002, but six of the seven engine manufacturers that serve the U.S. market were unable to certify a compliant engine by the October deadline. All seven have now certified at least one compliant engine, according to EPA, but until they obtain certification for all of their

engines, manufacturers are subject to non-conformance penalties that vary depending on the size of the engine and the amount by which its emissions exceed the standard. Far more stringent standards will take effect in the 2007 model year, and the manufacturers generally argue that they will be unable to meet these standards as well. Diesel fuel will be subject to new standards beginning in 2006; these may pose difficulty for some refiners, and could add to the cost of diesel fuel. EPA and a Federal Advisory Committee Act panel have both reviewed the engine and fuel standards and concluded that they are achievable; but given the importance of diesel engines and fuel to the nation's economy, Congress may conduct its own oversight of diesel-related issues. **(CRS Contacts: Jim McCarthy and Brent Yacobucci)**

Alternative Fuels and Vehicles

Several federal laws, including TEA-21, have requirements and/or provide incentives for the use of alternative fuels and vehicles. Within TEA-21, the Congestion Mitigation and Air Quality (CMAQ) Improvement Program provides funding for state and local initiatives to reduce air pollution. Eligible initiatives include the purchase of alternative fuels and vehicles, as well as the development of alternative fuel infrastructure. TEA-21 allows for other incentives, including permitting states to exempt alternative fuel vehicles from HOV restrictions. Outside of TEA-21 reauthorization, the Bush Administration has made research and development of fuel cell vehicles and hydrogen fuel a priority. In January 2002, the Administration announced the FreedomCAR program, which increases federal research on fuel cell vehicles. In January 2003, the Administration announced the FreedomFuel program, which complements FreedomCAR and increases research funding for hydrogen fuel. Alternative fuels—especially hydrogen—and vehicles will play a key role in the debate over a comprehensive energy policy. On April 11, 2003, the House passed its version of H.R. 6, which (among other provisions) mandates the use of renewable fuel in gasoline and provides funding for hydrogen research, grants for advanced buses, and tax incentives for fuel cell vehicles. The Senate version of H.R. 6, which passed on July 31, 2003, contains many similar provisions to those in the House version. For additional discussion, see CRS Report RL30484, *Alternative Transportation Fuels and Vehicles*, and CRS Report RL30758, *Advanced Vehicle Technologies*. **(CRS Contact: Brent Yacobucci)**.