

**SECTION-BY-SECTION SUMMARY OF HIGHWAY TITLE OF CHAIRMAN MICA'S DRAFT BILL****Title I – Federal-Aid Highways**

**Sec. 1001. Amendments to title 23, United States Code.** Provides that all references in this title are to title 23 U.S.C. unless otherwise noted.

**Subtitle A – Authorization of Programs**

**Sec. 1101. Authorization of appropriations.** Authorizes \$129.415 billion in contract authority over the four-year FY 2013-2016 period, from the Highway Account of the Highway Trust Fund, for programs including National Highway System, Surface Transportation Program, Highway Safety Improvement Program, Tribal Transportation Program, Federal Lands Transportation Program, the Recreational Trails Program, and the Appalachian Development Highway System. Authorizes \$9.068 billion in contract authority over the four-year FY 2013-2016 period, from the Alternative Transportation Account of the Highway Trust Fund, for the FHWA programs of CMAQ, ferry boats and terminals, Puerto Rico highways, and the territorial highway program. Maintains the 10 percent DBE set-aside as under SAFETEA-LU, as adjusted for inflation.

**Sec. 1102. Highway obligation ceiling.** Provides annual obligation limitations on the Highway Account contract authority programs authorized by sec. 1101(a) of the bill, with the same \$739 million per year in exemptions that existed under SAFETEA-LU and its extensions. This obligation limitation is \$27.366 billion in FY 2013 and rises to \$38.000 billion in FY 2016. The distribution of the obligation limitation appears the same as under current law (administrative expenses and takedown off the top, with ADHS and \$2 billion of equity bonus receiving special limitation.

**Sec. 1103. Alternative transportation account obligation ceiling.** Provides a separate obligation limitation of \$2.707 billion per year on the highway contract authority from the Alternative Transportation Account authorized under sections 1101(b) and 5101 of the bill. ("5101" should be "7001" to incorporate the research authorizations, since there is no sec. 5101 in the draft bill.)

**Sec. 1104. Apportionment.** [Reserved for future use.]

**Sec. 1105. Federal-aid systems.** Amends the definition of "National Highway System" in 23 U.S.C. 103(b) to incorporate all modifications and border crossings approved by DOT prior to enactment of this bill. Adds a new requirement for a risk-based state asset management plan for the National Highway System. The Secretary must establish the process for states to develop and implement plans within two years of enactment. In the second fiscal year after the Secretary establishes that process, any state that has not developed and implemented such an

asset management plan will see its federal matching share for projects under the NHS program decreased to 70 percent.

**Sec. 1106. National Highway System program.** Strikes 23 U.S.C. 119 (the Interstate Maintenance program) and replaces it with a new authorization for a new program to support the National Highway System (including the Interstate System as a subset of the NHS). Federal cost shares of projects will continue to be set under 23 U.S.C. 120(b) or (a) depending on location.

**Sec. 1107. Surface transportation program.** Amends 23 U.S.C. 133 to include funding for ADHS construction, for replacement of off-system bridges and tunnels, and for construction of new bridges and tunnels at new locations on federal-aid highways. Repeals the requirement in 23 U.S.C. 133(d)(2) that at least 10 percent of a state's annual STP apportionment must be spent on transportation enhancements and amends the sub-allocation distribution in 23 U.S.C. 133(d)(3) to reflect the abolition of the enhancements set-aside. Requires consultation with rural planning organizations before obligating funding in areas between 5K-200K population. Allows up to 15 percent of funding for areas under 5K population to be obligated on minor collector roads.

**Sec. 1108. Congestion mitigation and air quality improvement program.** Amends 23 U.S.C. 149(b) to clean up organization of the paragraph and: eliminate the traffic monitoring and truck stop electrification provision in 23 U.S.C. 149(b)(4), eliminate the grandfathering language in 149(b)(5); eliminate the emergency communications provision in 149(b)(6), and eliminate the diesel retrofit language in 149(b)(7). In their place is blanket permission for the Secretary to approve projects under CMAQ if "the Secretary determines that the project or program is likely in contribute to the mitigation of congestion." Maintains the existing PM-10 rule in 149(b) in modified form as a special rule. Adds a new special rule in 149(b) allowing states to obligate CMAQ funding for new capacity for single occupant vehicles only if the project is likely to contribute to congestion mitigation or air quality. Repeals 23 U.S.C. 149(f) which was the cost-effective emission reduction guidance.

**Sec. 1109. Equity bonus program.** [Reserved for future use.]

**Sec. 1110. Project approval and oversight.** Amends 23 U.S.C. 106(c)(1) to allow a state to assume the Secretary's responsibility on Interstate System projects. Amends 23 U.S.C. 106(e) to restrict value engineering analysis to NHS roads and bridges receiving federal assistance and to increase the cost threshold from \$25 million to \$50 million for highway projects and from \$20 million to \$40 million for bridge projects. Clarifies that the value engineering provisions do not apply to design-build projects. Amends 23 U.S.C. 106(h) to require megaproject analysis to assess the appropriateness of using public-private partnerships. Adds a new 23 U.S.C. 106(j)

encouraging use of advanced modeling technologies. Requires USDOT to make public on the Internet all expenditure data for funds made available under title 23 and under chapter 53 of title 49 U.S.C.

**Sec. 1111. Emergency relief.** Amends 23 U.S.C. 125(d) to clean up the paragraph and eliminate the \$100 million single-state, single-disaster ceiling. Amends 23 U.S.C. 125(e) to add reimbursement provisions for federal agencies. Directs USDOT to update its ER regulations to ensure that states are only allocated funds they can actually obligate in the current fiscal year and determine whether or not to raise the eligible event threshold.

**Sec. 1112. Uniform transferability of Federal-aid highway funds.** Rewrites 23 U.S.C. 126 to lower the percentage of a state's formula apportionments that can be transferred from program to program from 50 percent to 25 percent.

**Sec. 1113. Ferry boats and ferry terminal facilities.** Amends 23 U.S.C. 147 to strike references in 147(b) to "ferry maintenance facilities" and to strike the allocation structure on which the program is presently based (which has \$20 million in set-asides for Washington State, Alaska and New Jersey) and create a new apportionment formula for states – 35 percent for total annual vehicles carried by ferry, 35 percent based on total annual passengers carried by ferry, and 30 percent for total ferry route-mile systems.

**Sec. 1114. National highway bridge and tunnel inventory and inspection program.** Rewrites 23 U.S.C. 151 to establish a national highway bridge and tunnel inventory at USDOT in consultation with states and other federal agencies. Requires USDOT to establish national highway bridge and tunnel inspection standards.

**Sec. 1115. Minimum investment in highway bridges.** Requires that states spend at least 10 percent of their NHS apportionments each year on on-NHS bridges if USDOT determines that at least 10 percent of the state's total on-NHS bridge deck area is structurally deficient. If USDOT determines that at least 15 percent of the total deck area of a state's off-system bridges are structurally deficient, then the state must spend an amount equal to 110 percent of what the spent on off-system bridges in FY 2009 in the new year (to be taken from the state's STP apportionment).

**Sec. 1116. Minimum penalties for repeat offenders for driving while intoxicated or driving under the influence.** Amends 23 U.S.C. 164(a) to redefine a permissible repeat DUI offender law as one that requires a one-year minimum license suspension or limited driving privileges for one year with an ignition interlock device.

**Sec. 1117. Puerto Rico highway program.** Amends 23 U.S.C. 165 to extend and simplify the Puerto Rico highway program and eliminate the unique method of calculating Puerto Rico safety penalties.

**Sec. 1118. Appalachian Development Highway System.** Requires the apportionment of ADHS funds to states on the basis of the latest available cost-to-complete estimate for the ADHS system. Amends 23 U.S.C. 120(j)(a)(A) to strike the reference to the ADHS.

**Sec. 1119. References to Mass Transit Account.** Deems any reference in law to the Mass Transit Account of the Highway Trust Fund to refer instead to the new Alternative Transportation Account of the Highway Trust Fund.

### **Subtitle B – Innovative Financing**

**Sec. 1201. Transportation infrastructure finance and innovation.** Reauthorizes the TIFIA program at \$1 billion per year over fiscal years 2013-2016. Amends 23 U.S.C. 601(a) to allow retroactive reimbursement of project costs and adds a new definition for “master credit agreement” and amends the definition of “project” to include programs of related projects. Rewrites 23 U.S.C. 602 to allow a PPP to be named later as the obligor in an application by a state or municipality, add creditworthiness standards including an “investment grade” rating from at least 2 credit agencies (1 agency if the project senior debt is less than \$75 million), and add regional significance and beneficial effect selection criteria. Allows TIFIA credit instruments to finance 100 percent of development phase activities. Amends 23 U.S.C. 603 to increase the maximum TIFIA share of project costs from 33 percent to 49 percent and adds nonsubordination clauses. Amends 23 U.S.C. 605 to direct USDOT to economize the time and cost of the TIFIA approval process. Amends 23 U.S.C. 608 to allow the Secretary contingent commitment authority for projects covered by master credit agreements of not more than \$150 million of budget authority per year and to provide for the oversubscription of the TIFIA program.

**Sec. 1202. State infrastructure bank program.** Amends 23 U.S.C. 610 to reauthorize the SIB program and increase the percentage of a state’s annual highway apportionments that can be used to capitalize a SIB from 10 percent to 15 percent.

**Sec. 1203. State infrastructure bank capitalization.** Provides \$750 million per year for grants to states to capitalize SIBs, to be apportioned to states in the ratio that the state’s combined NHS, STP and HSIP apportionments bear to the national total for that year.

**Sec. 1204. Tolling.** Amends 23 U.S.C. 129(a) to allow tolling of initial construction or reconstruction of toll highways, bridges and tunnels on the Interstate system and to allow conversion of HOV lanes to toll lanes under some conditions. All toll revenues on federal-aid

highways are only to be used for debt service on the toll project, reasonable return on investment for any private financiers, facility operational costs that are necessary and proper, payments to PPP partners under a PPP agreement, and for any other federal-aid purpose if the public authority certifies annually that the toll facility is being properly maintained.

**Sec. 1205. HOV facilities.** Amends 23 U.S.C. 166 to make HOV toll language compatible with sec. 129. Adds a new 23 U.S.C. 166(d)(2)(D) to require maintenance of operating performance for HOV facilities.

**Sec. 1206. Public-private partnerships.** Requires USDOT to publish PPP best practices on its website and to provide technical assistance to states and municipalities for PPP projects. Directs USDOT to development, within 18 months, standard model PPP contracts.

### **Subtitle C – Highway Safety**

**Sec. 1301. Highway safety improvement program.** Rewrites 23 U.S.C. 148 to extend the HSIP, clarify terms and eliminate references to high risk rural roads.

**Sec. 1302. Railway-highway crossings.** Amends 23 U.S.C. 130 to require states to make surveys and schedules public and require states to compile and submit action plans for priority high-risk grade crossings.

**Sec. 1303. Highway worker safety.** Requires DOT to modify 23 CFR 630.1108 to require positive protective measures in all work zones when traffic is present and where workers have no means of escape and temporary longitudinal traffic barriers in some circumstances. Requires DOT to modify its regulations under sec. 1402 of SAFETEA-LU relating to apparel.

### **Subtitle D – Freight Mobility**

**Sec. 1401. National freight policy.** Requires DOT to consult with public and private stakeholders and produce a 5-year National Freight Policy within 1 year of enactment. Describes the contents of the Policy and lays out the goals of the Policy. Requires changes in the BTS commodity flow survey if needed to reduce data gaps.

**Sec. 1402. State freight advisory committees.** Encourages each state to establish freight advisory committees.

**Sec. 1403. State freight plans.** Encourages states to develop freight plans that provide comprehensive plans for state's immediate and long-term freight investment needs. Prescribes minimum contents for such plans.

**Sec. 1404. Trucking productivity.** Amends 23 U.S.C. 127(a) to allow states to permit trucks with gross vehicle weights of up to 126,000 pounds on up to 25 miles of their Interstate systems (the

current limit is 80,000 pounds). Amends 23 U.S.C. 127(d) to give all states authority to allow any kind of longer combination vehicles (LCVs) on any road if that state currently allows LCVs of any sort on specific roads. Adds a new 23 U.S.C. 127(i) to require all states to allow car hauler trailers of up to 88,000 pounds on federal-aid roads or immediate connectors (under the reasonable access rule). Adds a new 23 U.S.C. 127(j) granting states permission to allow six-axle trucks (up from the current five axles) totaling a gross weight of 97,000 pounds on its Interstates. USDOT shall establish and collect a fee for the operation six-axle trucks in whatever amount the Secretary determines equals “as nearly as possible the pro rata share of the increased costs, if any, to the Interstate System attributable to the operation of” the six-axle trucks. Adds a new 23 U.S.C. 127(k) allowing temporary permits for overweight vehicles during Stafford Act emergency declarations. Makes conforming changes in definitions under 49 U.S.C. 31111 and 31112.

#### **Subtitle E – Federal Lands and Tribal Transportation.**

**Sec. 1501. Federal lands and tribal transportation programs.** Rewrites 23 U.S.C. sections 201-203 to restructure federal lands and Indian transportation programs. The existing programs are streamlined into a tribal transportation program in sec. 202 and the Federal lands transportation program in sec. 203. Within the federal lands program, the National Park Service will receive an annual minimum allocation of 38 percent, the Forest Service no less than 32 percent, and the Fish and Wildlife Service a minimum of 4.5 percent.

**Sec. 1502. Definitions.** Rearranges and updates terms used in this subtitle in the list in 23 U.S.C. 101.

**Sec. 1503. Conforming amendments.** Amends 23 U.S.C. 120 to update that section for the new federal lands and tribal transportation program structures. Makes conforming changes in other statutes.

**Sec. 1504. Repeals; effective date.** Repeals 23 U.S.C. 204 and 214.

**Sec. 1505. Clerical amendment.** Amends the table of contents of title 23 chapter 2.

#### **Subtitle F – Program Elimination and Consolidation**

**Sec. 1601. Program elimination and consolidation.** Eliminates the following programs (many of which are obsolete) and repeals their authorization statute: RABA (23 U.S.C. 110), high priority projects (23 U.S.C. 117), Interstate discretionary projects (23 U.S.C. 118(c)), junkyard control (23 U.S.C. 136), highway bridge program (23 U.S.C. 144), hazard elimination program (23 U.S.C. 152), seat belt incentive grants (23 U.S.C. 157), public recreation access on certain lakes (23 U.S.C. 155), reimbursement for Interstate segment cost without federal assistance (23

U.S.C. 160), scenic byways (23 U.S.C. 162), Inter-American highway (23 U.S.C. 212), Darien Gap highway (23 U.S.C. 216), state coordinators (23 U.S.C. 217), Alaska Highway (23 U.S.C. 218), management systems (23 U.S.C. 303), cooperation with other republics (23 U.S.C. 309), landscaping and scenic enhancement (23 U.S.C. 319), MAGLEV (23 U.S.C. 322), TCSP (sec. 1117 of SAFETEA-LU), projects of national and regional significance (sec. 1301 of SAFETEA-LU), national corridor infrastructure improvement (sec. 1302 of SAFETEA-LU), truck parking facilities (sec. 1305 of SAFETEA-LU), freight intermodal distribution pilot (sec. 1306 of SAFETEA-LU), MAGLEV deployment (sec. 1307 of SAFETEA-LU), Delta Regional Transportation (sec. 1308 of SAFETEA-LU), safe routes to schools (sec. 1404 of SAFETEA-LU), national work zone safety information clearinghouse (sec. 1410 of SAFETEA-LU), roadway safety (sec. 1411(b) of SAFETEA-LU), highways for LIFE (sec. 1402 of SAFETEA-LU), express lanes demonstration (sec. 1604(b) of SAFETEA-LU), Interstate construction toll pilot (sec. 1604(c) of SAFETEA-LU), America's Byways Resource Center (sec. 1803 of SAFETEA-LU), historic covered bridges (sec. 1804 of SAFETEA-LU), nonmotorized transportation pilot (sec. 1807 of SAFETEA-LU), racial profiling grants (sec. 1906 of SAFETEA-LU), pavement marking demonstration program (sec. 1907 of SAFETEA-LU), limitation of project approval (sec. 1958 of SAFETEA-LU), and Denali Access System (sec. 309 of the Denali Commission Act of 1978).

#### **Subtitle G – Miscellaneous**

**Sec. 1701. Transportation enhancement activity defined.** Amends the definition list in 23 U.S.C. 101(a)(35) to provide that acquisition of scenic easements and scenic or historic sites, historic preservation, rehabilitation and operation of historic transportation buildings, structures and facilities, preservation of abandoned railway corridors, and establishment of transportation museums are no longer eligible uses of federal-aid funding.

**Sec. 1702. Pavement markings.** Amends 23 U.S.C. 109 to prohibit pavement marking projects that contain more than 200 parts per million of arsenic or lead.

**Sec. 1703. Rest areas.** Amends 23 U.S.C. 111 to allow states to acquire, construct, operate and maintain rest areas along Interstate highways and to include commercial activities to provide goods, services and information, including advertising not visible from the main roadway, state tourism promotion, historical or tourism related entertainment items, travel-related information including coupon books, automatic teller machines and lottery machines.

**Sec. 1704. Justification reports for access points on the Interstate system.** Amends 23 U.S.C. 111 to permit state DOTs to approve justification reports for new Interstate access points.

**Sec. 1705. Patented or proprietary items.** Amends 23 U.S.C. 112 to allow states to use federal funds to pay for proprietary items if the state DOT certifies it to be necessary.

**Sec. 1706. Preventive maintenance.** Amends 23 U.S.C. 116 to define preventive maintenance and similar terms.

**Sec. 1707. Mapping.** Amends 23 U.S.C. 306 to require the use of photometric mapping where applicable and to survey states as to the percentage of mapping done for states by private sector sources.

**Sec. 1708. Funding flexibility for transportation emergencies.** Adds a new 23 U.S.C. 330 to allow state governors to use federal-aid apportionments to repair or replace facilities damaged in transportation emergencies.

**Sec. 1709. Budget justification.** Adds a new 23 U.S.C. 310 requiring budget justification documents for all transportation modal administrations be submitted to the House T&I and Senate EPW and Banking Committees concurrently with the President's annual budget transmission.

**Sec. 1710. Extension of over-the-road bus and public transit vehicle exemption from axle weight restrictions.** Amends sec. 1023(h) of ISTEA to making the exemption permanent.

**Sec. 1711. Repeal of requirement for Interstate system designation.** Amends sec. 1105(e)(5)(A) of ISTEA to simplify and clarify that the segment has to meet the design standards approved by the Secretary under 23 U.S.C. 109(b).

**Sec. 1712. Retroreflectivity.** Requires the Secretary to amend the Manual Of Uniform Traffic Control Devices within one year of enactment to remove compliance dates for retroreflectivity standards for signage.

**Sec. 1713. Engineering judgment.** Requires USDOT to issue guidance to state DOTs within 90 days of enactment to clarify that MUTCD standards are not a substitute for engineering judgment.

**Sec. 1714. Evacuation routes.** Requires states to give "adequate consideration" to the needs of evacuation routes when allocating highway funding.

**Sec. 1715. Truck parking.** Requires DOT to conduct a nationwide survey of commercial vehicle parking facilities. Allows states to use highway apportionments for constructing safety rest areas on the NHS including commercial vehicle parking, make inspection or weight stations available for use as truck parking, and making other specified capital improvements that improve truck parking.

**Sec. 1716. Use of certain administrative facilities.** Allows the Secretary to use up to \$2 million of FHWA administrative expenses contract authority each year to operate the work zone and public road safety clearinghouses and provide work zone safety grants.

**Sec. 1717. Transportation training and employment programs.** Encourages the Departments of Education and Labor to use funds for training and employment education programs to develop programs for transportation fields and trades.

**Sec. 1718. Notice of certain grant awards.** Requires USDOT to give the House Transportation and Infrastructure Committee written notice of all grants over \$500,000 three business days before the grants are announced to the public.