



Preserving America's Heritage

SURFACE TRANSPORTATION REAUTHORIZATION Office of Federal Agency Programs

Background. The two-year, \$106 billion surface transportation reauthorization bill, *Moving Ahead for Progress in the 21st Century* (MAP-21), signed into law in July 2012 will expire on October 1, 2014. The Highway Trust Fund, which funds a significant portion of the construction and repair of our surface transportation system, will also run out of money later this summer. There is, therefore, considerable urgency to pass a bill this summer that continues funding for surface transportation agencies and projects that will maintain, repair, and improve the nation's transportation infrastructure.

On April 29, the Administration transmitted to Congress a \$302 billion, four-year transportation authorization proposal: the Generating Renewal, Opportunity, and Work with Accelerated Mobility, Efficiency, and Rebuilding of Infrastructure and Communities throughout America Act, or GROW AMERICA Act. Subsequent to receipt of this proposal, the Senate introduced the MAP-21 Reauthorization Act (S2322) on May 12, 2014. The Senate bill incorporates some of the streamlining provisions from the administration's bill, but is a six-year reauthorization that maintains surface transportation funding at current levels. On May 15, 2014, the bill was favorably reported out of the Committee on Environment and Public Works. The bill's sponsor, Committee Chairman Barbara Boxer, was joined by co-sponsors Senators Vitter (Ranking Committee member), Carper, and Barrasso in moving the bill forward.

Issues for Potential Discussion: Subtitle C of S.2322 contains a number of provisions for accelerated project delivery that continue, or expand, the efficiencies in MAP-21. Of particular interest to preservationist community is the provision that would amend the requirements of Section 4(f) of the Department of Transportation Act, which establishes independent historic preservation review requirements for historic properties affected by transportation projects.

Under Section 4(f), U.S. Department of Transportation agencies may not approve a project that uses a 4(f) property if there is a feasible and prudent alternative to such use. Section 4(f) properties include publicly owned public parks, recreation areas, and wildlife or waterfowl refuges, or any publicly or privately owned historic site listed or eligible for listing in the National Register of Historic Places. If there is no feasible and prudent alternative that avoids all Section 4(f) properties, the agency official must find that all possible planning to minimize harm to the Section 4(f) property has occurred. The new provision for Section 4(f) in S.2322 is intended to eliminate the duplication of effort where the requirements of Section 4(f) and Section 106 are seen as overlapping.

Preservation stakeholders have expressed concern that Section 1303 may weaken Section 4(f) protections for historic properties by allowing an exemption from the substantive Section 4(f) requirement to adopt "all possible planning to minimize harm" from transportation projects. If the DOT official (FHWA, FAA, FTA) makes a determination that no feasible or prudent alternative exists to avoid use of an historic site,

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they can provide notice to SHPO/THPO, the ACHP (if participating) and the Secretary of Interior (SOI), and request concurrence that the determination is sufficient to satisfy the requirements of 4(f) subsection (a)(1). If each provides the needed concurrence, no further analysis under subsection (a)(1) will be required provided they all concur in the treatment of the historic site as described in the MOA or PA (presumably by signing the MOA or PA).

Several preservation organizations including the National Trust for Historic Preservation and the National Conference of State Historic Preservation Officers (NCSHPO) have expressed strong concerns about Section 1303 of S. 2322 because of this provision. Further information about the bill is provided in the Legislative Agenda paper in Tab 1.

In 2004, the ACHP supported using outcomes in the Section 106 process to meet the requirements of Section 4(f) in certain circumstances. However, S.2322 differs from what was previously agreed to after extensive collaboration with practitioners. Since ACHP was not given advance notice of Section 1303, it has suggested that DOT and the preservation community should explore further whether administrative solutions exist to establish the efficiencies DOT is seeking.

Next Steps. The ACHP has recommended to DOT that it consider convening transportation officials and preservation stakeholders to clarify what issues actually need attention in the interface between Section 4(f) and Section 106 reviews and evaluate alternatives to improve coordination between the two processes. Such a forum might identify opportunities for making administrative improvements as well as appropriate revisions to S. 2322, if legislation is deemed necessary, that would provide a more measured response to coordinating Section 4(f), NEPA, and Section 106 to avoid any duplication of effort, and to ensure that the protections provided in Section 4(f) are not diminished. \

Relationship to ACHP's Strategic Plan. Advising DOT on the development of surface transportation reauthorization fulfills ACHP's current strategic plan at Section II: Improve federal agency programs to enhance the stewardship of the full range of historic properties and contribute to tribal, state, local, and private preservation efforts.

Action Items. Committee members will be asked to express their views regarding proposed changes to Section 4(f), and how DOT and ACHP might collaborate on convening stakeholders to explore other administrative options or legislative revisions that would improve the coordination of these reviews and strengthen the consideration of historic properties in surface transportation reauthorization.

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