

FY 2017 Appropriations Senate Transportation-HUD Report Summary and Funding Tables

The Senate Transportation-HUD report accompanying the FY 2017 appropriations bill was released last week. To make it easier to review, we have copied the relevant report language which you may find to be of interest.

Funding.—The bill fully funds the promises made by the FAST Act by providing \$43.266 billion in obligation limitations for the Federal-aid highway program. The bill reiterates the language from the FY 2016 bill allowing states to repurpose “dead earmarks” for other projects in the area. A state-by-state highway funding FY 2016-2017 comparison table is attached.

Guidance Documents.—The Committee is increasingly concerned about the use of guidance documents, or interpretive rules, to impose new requirements on regulated entities even though such documents are not legally binding. The Supreme Court has recognized there can be a fine line between what should be issued as a regulation for purposes of notice and comment rulemaking under the Administrative Procedure Act and what can be issued as guidance. The Supreme Court has also recognized that Federal agencies may sometimes issue guidance to circumvent the notice and comment rulemaking process. Legal scholars and multiple members of Congress have also expressed concern about the use of guidance to avoid rulemaking. Finally, the Government Accountability Office found that if an agency periodically reviews its guidance it can significantly reduce unnecessary guidance. For example, after a sub-agency in the Department of Labor reviewed its guidance to determine if it was relevant and current, the sub-agency was able to reduce its guidance by 85 percent. GAO also found that the dissemination of guidance to the public can be improved.

The Committee recommends the Departments of Transportation and Housing and Urban Development clearly label in a plain, prominent, and permanent manner that the agency’s guidance documents are not legally binding and may not be relied upon by the agency as grounds for agency action. The Committee also recommends this include a thorough explanation on an agency’s guidance document about why the agency believes it is appropriate to issue guidance about a matter instead of proposing a regulation and what specific statutory provisions or regulation(s) the guidance is interpreting. The Committee further recommends this guidance be updated every 2 years, with input solicited from the public, to determine if any of its guidance is duplicative, outdated, ineffective, insufficient, or excessively burdensome and needs to be modified, streamlined, or repealed and place all guidance documents in one place on its Web site as well as on the relevant sub-agency Web page. This information should be easily accessible for the public to comment on guidance and should be sent to the Office of Management and Budget to determine if the guidance is significant.

Job Order Contracting.—The Committee directs FHWA, within 30 days of enactment of this act, to approve job order contracting, as currently allowed through the Special Experimental Projects No. 14 Program, as an operational contracting technique for all Federal-aid Highway Program-funded projects.

(Note: Job Order Contracting (JOC) is an innovative contracting concept, under Special Experimental Project No. 14 (SEP-14), which is allowed by Federal Highway Administration (FHWA) to evaluate non-traditional contracting techniques that are competitive in nature but do not comply with the requirements in Title 23 of the CFR. JOC is an annual contract which is competitively bid on, that enables agencies to accomplish a large number of minor repairs, renovation, and maintenance projects based on a unit cost, unspecified-quantity and non-determinate locations. By establishing fixed unit costs, it reduces the time and expense of designing, bidding, and constructing projects. However, agencies are still required to continue handling their procurements in full compliance with the applicable federal and state laws. Just as in the traditional procurement process for construction projects, state or local agency procurement would solicit bids, evaluate responses, and award a contract to the lowest responsible bidder. To qualify for federal funds participation, only preventive maintenance activities which extend the service life of the facility are eligible, not routine maintenance.)

Permeable Pavements.—The Committee encourages the Secretary to accelerate research, demonstration, and deployment for permeable pavements to achieve flood mitigation, pollutant reduction, storm-water runoff reduction and conservation. Projects may include roadway shoulder load testing and documenting life-cycle cost efficiency.

Technology Solutions.—The Committee encourages the Department of Transportation to review and test nano-technology solutions that may provide a benefit to Federal, State and local governments by extending the life and utility of materials such as cement, asphalt and steel.

Composites.—The Committee recognizes that composites can improve the performance of bridge structures and prove valuable for other uses, including road signs. Proven benefits of composites include strength, low weight, corrosion resistance, and long-term durability, and these characteristics can lead to improved performance for bridges and other structures. The Committee urges the Department to use composites in demonstration projects and recommends the continued research, development, and regulatory reform needed, if any, to clear hurdles for deploying composites into our highway and bridge system.

TRANSPORTATION AND HOUSING AND URBAN DEVELOPMENT, AND RELATED AGENCIES APPROPRIATIONS BILL, 2017

APRIL 21, 2016.—Ordered to be printed

State Apportionments.—The following table shows the expected obligation limitation provided to each State under the Committee's recommended funding level:

FEDERAL-AID HIGHWAY PROGRAM OBLIGATION LIMITATION

	Fiscal year—		Committee recommendation
	2016 enacted	2017 estimate	
Formula Programs			
Alabama	\$718,193,418	\$734,106,078	\$734,106,078
Alaska	453,571,291	463,600,423	463,600,423
Arizona	689,276,768	704,623,520	704,623,520
Arkansas	478,215,508	489,814,257	489,814,257
California	3,413,411,372	3,488,766,125	3,488,766,125
Colorado	496,238,608	507,202,747	507,202,747
Connecticut	464,764,375	475,064,913	475,064,913
Delaware	156,817,461	160,385,014	160,385,014
District of Columbia	151,196,174	154,542,947	154,542,947
Florida	1,783,513,693	1,833,252,518	1,833,252,518
Georgia	1,216,877,969	1,243,960,726	1,243,960,726
Hawaii	153,423,443	156,808,517	156,808,517
Idaho	270,912,348	276,911,555	276,911,555
Illinois	1,347,592,985	1,377,414,613	1,377,414,613
Indiana	879,470,562	898,990,495	898,990,495
Iowa	465,298,970	475,606,951	475,606,951
Kansas	357,802,906	365,729,026	365,729,026
Kentucky	629,032,323	642,968,189	642,968,189
Louisiana	634,550,564	648,561,596	648,561,596
Maine	171,136,207	174,918,814	174,918,814
Maryland	569,712,716	582,317,695	582,317,695
Massachusetts	573,705,651	586,445,248	586,445,248
Michigan	997,792,873	1,019,877,126	1,019,877,126
Minnesota	604,304,634	617,663,548	617,663,548
Mississippi	447,647,643	457,548,275	457,548,275
Missouri	876,358,184	895,739,463	895,739,463
Montana	379,981,225	388,383,353	388,383,353
Nebraska	273,727,580	279,790,090	279,790,090
Nevada	344,238,874	351,855,485	351,855,485
New Hampshire	156,557,427	160,023,005	160,023,005
New Jersey	943,518,427	964,461,918	964,461,918
New Mexico	340,020,446	347,539,606	347,539,606
New York	1,592,003,170	1,627,212,411	1,627,212,411
North Carolina	987,832,334	1,009,807,940	1,009,807,940
North Dakota	230,006,417	235,091,606	235,091,606
Ohio	1,216,610,017	1,243,449,331	1,243,449,331
Oklahoma	600,405,162	613,707,231	613,707,231
Oregon	463,004,294	473,241,333	473,241,333
Pennsylvania	1,564,665,862	1,589,080,502	1,589,080,502
Rhode Island	202,671,917	207,152,256	207,152,256
South Carolina	633,948,635	647,993,466	647,993,466
South Dakota	259,758,519	265,534,977	265,534,977
Tennessee	782,891,123	800,199,870	800,199,870
Texas	3,269,713,792	3,342,114,445	3,342,114,445
Utah	328,873,330	336,156,562	336,156,562
Vermont	188,181,637	192,340,798	192,340,798
Virginia	943,257,497	964,107,697	964,107,697
Washington	642,273,878	656,493,056	656,493,056
West Virginia	413,826,350	422,992,496	422,992,496
Wisconsin	712,577,597	728,359,430	728,359,430
Wyoming	232,000,764	237,121,473	237,121,473
Subtotal	36,704,564,920	37,517,030,716	37,517,030,716
Allocated programs	5,250,644,793	5,334,321,057	5,334,321,057
Sections 154 and 164 Penalties	382,356,953	391,314,893	391,314,893
High Risk Rural Roads Special Rule	23,433,334	23,433,334	23,433,334
Total	42,361,000,000	43,266,100,000	43,266,100,000