

The following portions of text from the recently enacted transportation legislation, “Moving Ahead for Progress in the 21st Century Act” or “MAP-21”, have been selected for reference in today’s discussion on the requirements for performance-based planning and programming.

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I. TITLE 23 – HIGHWAYS

a. SEC. 1203. NATIONAL GOALS AND PERFORMANCE MANAGEMENT MEASURES.

(a) IN GENERAL.—[Section 150](#) of title 23, United States Code, is amended to read as follows:

§ 150. National goals and performance management measures

(a) DECLARATION OF POLICY.—Performance management will transform the Federal-aid highway program and provide a means to the most efficient investment of Federal transportation funds by refocusing on national transportation goals, increasing the accountability and transparency of the Federal-aid highway program, and improving project decisionmaking through performance-based planning and programming.

(b) NATIONAL GOALS.—It is in the interest of the United States to focus the Federal-aid highway program on the following national goals:

(1) SAFETY.—To achieve a significant reduction in traffic fatalities and serious injuries on all public roads.

(2) INFRASTRUCTURE CONDITION.—To maintain the highway infrastructure asset system in a state of good repair.

(3) CONGESTION REDUCTION.—To achieve a significant reduction in congestion on the National Highway System.

(4) SYSTEM RELIABILITY.—To improve the efficiency of the surface transportation system.

(5) FREIGHT MOVEMENT AND ECONOMIC VITALITY.—To improve the national freight network, strengthen the ability of rural communities to access national and international trade markets, and support regional economic development.

(6) ENVIRONMENTAL SUSTAINABILITY.—To enhance the performance of the transportation system while protecting and enhancing the natural environment.

(7) REDUCED PROJECT DELIVERY DELAYS.—To reduce project costs, promote jobs and the economy, and expedite the movement of people and goods by accelerating project completion through eliminating delays in the project development and delivery process, including reducing regulatory burdens and improving agencies' work practices.

(c) ESTABLISHMENT OF PERFORMANCE MEASURES.—

(1) IN GENERAL.—Not later than 18 months after the date of enactment

of the MAP-21, the Secretary, in consultation with State departments of transportation, metropolitan planning organizations, and other stakeholders, shall promulgate a rulemaking that establishes performance measures and standards.

(2) ADMINISTRATION.—In carrying out paragraph (1), the Secretary shall—

(A) provide States, metropolitan planning organizations, and other stakeholders not less than 90 days to comment on any regulation proposed by the Secretary under that paragraph;

(B) take into consideration any comments relating to a proposed regulation received during that comment period; and

(C) limit performance measures only to those described in this subsection.

(3) NATIONAL HIGHWAY PERFORMANCE PROGRAM.—

(A) IN GENERAL.—Subject to subparagraph (B), for the purpose of carrying out section 119, the Secretary shall establish—

(i) minimum standards for States to use in developing and operating bridge and pavement management systems;

(ii) measures for States to use to assess—

(I) the condition of pavements on the Interstate system;

(II) the condition of pavements on the National Highway System (excluding the Interstate);

(III) the condition of bridges on the National Highway System;

(IV) the performance of the Interstate System; and

(V) the performance of the National Highway System (excluding the Interstate System);

(iii) minimum levels for the condition of pavement on the Interstate System, only for the purposes of carrying out section 119(f)(1); and

(iv) the data elements that are necessary to collect and maintain standardized data to carry out a performance-based approach.

(B) REGIONS.—In establishing minimum condition levels under subparagraph (A)(iii), if the Secretary determines that various geographic regions of the United States experience disparate factors contributing to the condition of pavement on the Interstate System in those regions, the Secretary may establish different minimum levels for each region;

(4) HIGHWAY SAFETY IMPROVEMENT PROGRAM.—For the purpose of carrying out section 148, the Secretary shall establish measures for States to use to assess—

(A) serious injuries and fatalities per vehicle mile traveled; and

(B) the number of serious injuries and fatalities.

(5) CONGESTION MITIGATION AND AIR QUALITY PROGRAM.—For the purpose of carrying out section 149, the Secretary shall establish measures for States to use to assess—

(A) traffic congestion; and

(B) on-road mobile source emissions.

(6) NATIONAL FREIGHT MOVEMENT.—The Secretary shall establish measures for States to use to assess freight movement on the Interstate System.

(d) ESTABLISHMENT OF PERFORMANCE TARGETS.—

(1) IN GENERAL.—Not later than 1 year after the Secretary has promulgated the final rulemaking under subsection (c), each State shall set performance targets that reflect the measures identified in paragraphs (3), (4), (5), and (6) of subsection (c).

(2) DIFFERENT APPROACHES FOR URBAN AND RURAL AREAS.—In the development and implementation of any performance target, a State may, as appropriate, provide for different performance targets for urbanized and rural areas.

(e) REPORTING ON PERFORMANCE TARGETS.—Not later than 4 years after the date of enactment of the MAP-21 and biennially thereafter, a State shall submit to the Secretary a report that describes—

(1) the condition and performance of the National Highway System in the State;

(2) the effectiveness of the investment strategy document in the State asset management plan for the National Highway System;

(3) progress in achieving performance targets identified under subsection (d); and

(4) the ways in which the State is addressing congestion at freight bottlenecks, including those identified in the National Freight Strategic Plan, within the State.”.

II. TITLE 49, CHAPTER 53 – PUBLIC TRANSPORTATION

a. § 5301. Policies and Purposes

(a) **DECLARATION OF POLICY.**—It is in the interest of the United States, including the economic interest of the United States, to foster the development and revitalization of public transportation systems with the cooperation of both public transportation companies and private companies engaged in public transportation.

b. § 5326. Transit asset management

(b) **TRANSIT ASSET MANAGEMENT SYSTEM.**—The Secretary shall establish and implement a national transit asset management system, which shall include—

(1) a definition of the term ‘state of good repair’ that includes objective standards for measuring the condition of capital assets of recipients, including equipment, rolling stock, infrastructure, and facilities;

(2) a requirement that recipients and subrecipients of Federal financial assistance under this chapter develop a transit asset management plan;

(3) a requirement that each designated recipient of Federal financial assistance under this chapter report on the condition of the system of the recipient and provide a description of any change in condition since the last report;

(4) an analytical process or decision support tool for use by public transportation systems that—

(A) allows for the estimation of capital investment needs of such systems over time; and

‘(B) assists with asset investment prioritization by such systems; and

(5) technical assistance to recipients of Federal financial assistance under this chapter.

(c) PERFORMANCE MEASURES AND TARGETS.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of the Federal Public Transportation Act of 2012, the Secretary shall issue a final rule to establish performance measures based on the state of good repair standards established under subsection (b)(1).

(2) TARGETS.—Not later than 3 months after the date on which the Secretary issues a final rule under paragraph (1), and each fiscal year thereafter, each recipient of Federal financial assistance under this chapter shall establish performance targets in relation to the performance measures established by the Secretary.

(3) REPORTS.—Each designated recipient of Federal financial assistance under this chapter shall submit to the Secretary an annual report that describes—

(A) the progress of the recipient during the fiscal year to which the report relates toward meeting the performance targets established under paragraph (2) for that fiscal year; and

(B) the performance targets established by the recipient for the subsequent fiscal year.

c. § 5329. Public transportation safety program

(d) PUBLIC TRANSPORTATION AGENCY SAFETY PLAN.—

(1) IN GENERAL.—Effective 1 year after the effective date of a final rule issued by the Secretary to carry out this subsection, each recipient or State, as described in paragraph (3), shall certify that the recipient or State has established a comprehensive agency safety plan that includes, at a minimum—

(A) a requirement that the board of directors (or equivalent entity) of the recipient approve the agency safety plan and any updates to the agency safety plan;

(B) methods for identifying and evaluating safety risks throughout all elements of the public transportation system of the recipient;

(C) strategies to minimize the exposure of the public, personnel, and property to hazards and unsafe conditions;

(D) a process and timeline for conducting an annual review and update of the safety plan of the recipient;

(E) performance targets based on the safety performance criteria and state of good repair standards established under subparagraphs (A) and (B), respectively, of subsection (b)(2);

(F) assignment of an adequately trained safety officer who reports directly to the general manager, president, or equivalent officer of the recipient; and

(G) a comprehensive staff training program for the operations personnel and personnel directly responsible for safety of the recipient that includes—

(i) the completion of a safety training program; and

(ii) continuing safety education and training.

III. SEC. 1201. METROPOLITAN TRANSPORTATION PLANNING.

(a) IN GENERAL.—Section 134 of title 23, United States Code, is amended to read as follows:

“§ 134. Metropolitan Transportation Planning

“(a) POLICY.—It is in the national interest—

“(1) to encourage and promote the safe and efficient management, operation, and development of surface transportation systems that will serve the mobility needs of people and freight and foster economic growth and development within and between States and urbanized areas, while minimizing transportation-related fuel consumption and air pollution through metropolitan and statewide transportation planning processes identified in this chapter; and

“(2) to encourage the continued improvement and evolution of the metropolitan and statewide transportation planning processes by metropolitan planning organizations, State departments of transportation, and public transit operators as guided by the planning factors identified in subsection (h) and section 135(d).

“(h) SCOPE OF PLANNING PROCESS.—

“(1) IN GENERAL.—The metropolitan planning process for a metropolitan planning area under this section shall provide for consideration of projects and strategies that will—

“(A) support the economic vitality of the metropolitan area, especially by enabling global competitiveness, productivity, and efficiency;

“(B) increase the safety of the transportation system for motorized and nonmotorized users;

“(C) increase the security of the transportation system for motorized and nonmotorized users;

“(D) increase the accessibility and mobility of people and for freight;

“(E) protect and enhance the environment, promote energy conservation, improve the quality of life, and promote consistency between transportation improvements and State and local planned growth and economic development patterns;

“(F) enhance the integration and connectivity of the transportation system, across and between modes, for people and freight;

“(G) promote efficient system management and operation; and

“(H) emphasize the preservation of the existing transportation system.

“(2) PERFORMANCE-BASED APPROACH.—

“(A) IN GENERAL.—The metropolitan transportation planning process shall provide for the establishment and use of a performance-based approach to transportation decisionmaking to support the national goals described in section 150(b) of this title and in section 5301(c) of title 49.

“(B) PERFORMANCE TARGETS.—

“(i) SURFACE TRANSPORTATION PERFORMANCE TARGETS.—

“(I) IN GENERAL.—Each metropolitan planning organization shall establish performance targets that address the performance measures described in section 150(c), where applicable, to use in tracking progress towards attainment of critical outcomes for the region of the metropolitan planning organization.

“(II) COORDINATION.—Selection of performance targets by a metropolitan planning organization shall be coordinated with the relevant State to ensure consistency, to the maximum extent practicable.

“(ii) PUBLIC TRANSPORTATION PERFORMANCE TARGETS. —Selection of performance targets by a metropolitan planning organization shall be coordinated, to

the maximum extent practicable, with providers of public transportation to ensure consistency with sections 5326(c) and 5329(d) of title 49.

“(C) TIMING.—Each metropolitan planning organization shall establish the performance targets under subparagraph (B) not later than 180 days after the date on which the relevant State or provider of public transportation establishes the performance targets.

“(D) INTEGRATION OF OTHER PERFORMANCE-BASED PLANS.—A metropolitan planning organization shall integrate in the metropolitan transportation planning process, directly or by reference, the goals, objectives, performance measures, and targets described in other State transportation plans and transportation processes, as well as any plans developed under chapter 53 of title 49 by providers of public transportation, required as part of a performance-based program.

“(3) FAILURE TO CONSIDER FACTORS.—The failure to consider any factor specified in paragraphs (1) and (2) shall not be reviewable by any court under this title or chapter 53 of title 49, subchapter II of chapter 5 of title 5, or chapter 7 of title 5 in any matter affecting a transportation plan, a TIP, a project or strategy, or the certification of a planning process.

“(i) DEVELOPMENT OF TRANSPORTATION PLAN.—

(1) REQUIREMENTS.—

(A) IN GENERAL.—Each metropolitan planning organization shall prepare and update a transportation plan for its metropolitan planning area in accordance with the requirements of this subsection.

(B) FREQUENCY.—

(i) IN GENERAL.—The metropolitan planning organization shall prepare and update such plan every 4 years (or more frequently, if the metropolitan planning organization elects to update more frequently) in the case of each of the following:

(I) Any area designated as nonattainment, as defined in section 107(d) of the Clean Air Act ([42 U.S.C. 7407\(d\)](#)).

(II) Any area that was nonattainment and subsequently designated to attainment in

accordance with section 107(d)(3) of that Act (42 7407(d)(3)) and that is subject to a maintenance plan under section 175A of that Act (42 7505a).

(ii) OTHER AREAS.—In the case of any other area required to have a transportation plan in accordance with the requirements of this subsection, the metropolitan planning organization shall prepare and update such plan every 5 years unless the metropolitan planning organization elects to update more frequently.

(2) TRANSPORTATION PLAN.— A transportation plan under this section shall be in a form that the Secretary determines to be appropriate and shall contain, at a minimum, the following:

(A) IDENTIFICATION OF TRANSPORTATION FACILITIES.—

(i) IN GENERAL.—An identification of transportation facilities (including major roadways, transit, multimodal and intermodal facilities, nonmotorized transportation facilities, and intermodal connectors) that should function as an integrated metropolitan transportation system, giving emphasis to those facilities that serve important national and regional transportation functions.

(ii) FACTORS.—In formulating the transportation plan, the metropolitan planning organization shall consider factors described in subsection (h) as the factors relate to a 20-year forecast period.

(B) PERFORMANCE MEASURES AND TARGETS.—A description of the performance measures and performance targets used in assessing the performance of the transportation system in accordance with subsection (h)(2).

(C) SYSTEM PERFORMANCE REPORT.—A system performance report and subsequent updates evaluating the condition and performance of the transportation system with respect to the performance targets described in subsection (h)(2), including—

(i) progress achieved by the metropolitan planning organization in meeting the performance targets in comparison with system performance recorded in previous reports; and

(ii) for metropolitan planning organizations that voluntarily elect to develop multiple scenarios, an analysis of how the preferred scenario has improved the conditions and performance of the transportation system and how changes in local policies and investments have impacted the costs necessary to achieve the identified performance targets.

“(4) OPTIONAL SCENARIO DEVELOPMENT.—

“(A) IN GENERAL.—A metropolitan planning organization may, while fitting the needs and complexity of its community, voluntarily elect to develop multiple scenarios for consideration as part of the development of the metropolitan transportation plan, in accordance with subparagraph (B).

“(B) RECOMMENDED COMPONENTS.—A metropolitan planning organization that chooses to develop multiple scenarios under subparagraph (A) shall be encouraged to consider—

“(i) potential regional investment strategies for the planning horizon;

“(ii) assumed distribution of population and employment;

“(iii) a scenario that, to the maximum extent practicable, maintains baseline conditions for the performance measures identified in subsection (h)(2);

“(iv) a scenario that improves the baseline conditions for as many of the performance measures identified in subsection (h)(2) as possible;

“(v) revenue constrained scenarios based on the total revenues expected to be available over the forecast period of the plan; and

“(vi) estimated costs and potential revenues available to support each scenario.

“(C) METRICS.—In addition to the performance measures identified in section 150(c), metropolitan planning organizations may evaluate scenarios developed under this paragraph using locally-developed measures.

“(j) Metropolitan TIP.—

“(1) DEVELOPMENT.—

“(A) IN GENERAL.—In cooperation with the State and any affected public transportation operator, the metropolitan planning organization designated for a metropolitan area shall develop a TIP for the metropolitan planning area that—

“(i) contains projects consistent with the current metropolitan transportation plan;

“(ii) reflects the investment priorities established in the current metropolitan transportation plan; and

“(iii) once implemented, is designed to make progress toward achieving the performance targets established under subsection (h)(2).

“(B) OPPORTUNITY FOR COMMENT.—In developing the TIP, the metropolitan planning organization, in cooperation with the State and any affected public transportation operator, shall provide an opportunity for participation by interested parties in the development of the program, in accordance with subsection (i)(5).

“(C) FUNDING ESTIMATES.—For the purpose of developing the TIP, the metropolitan planning organization, public transportation agency, and State shall cooperatively develop estimates of funds that are reasonably expected to be available to support program implementation.

“(D) UPDATING AND APPROVAL.—The TIP shall be—

“(i) updated at least once every 4 years; and

“(ii) approved by the metropolitan planning organization and the Governor.

“(2) CONTENTS.—

“(A) PRIORITY LIST.—The TIP shall include a priority list of proposed Federally supported projects and strategies to be carried out within each 4-year period after the initial adoption of the TIP.

“(B) FINANCIAL PLAN.—The TIP shall include a financial plan that—

“(i) demonstrates how the TIP can be implemented;

“(ii) indicates resources from public and private sources that are reasonably expected to be available to carry out the program;

“(iii) identifies innovative financing techniques to finance projects, programs, and strategies; and

“(iv) may include, for illustrative purposes, additional projects that would be included in the approved TIP if reasonable additional resources beyond those identified in the financial plan were available.

“(C) DESCRIPTIONS.—Each project in the TIP shall include sufficient descriptive material (such as type of work, termini, length, and other similar factors) to identify the project or phase of the project.

“(D) PERFORMANCE TARGET ACHIEVEMENT.—The transportation improvement program shall include, to the maximum extent practicable, a description of the anticipated effect of the transportation improvement program toward achieving the performance targets established in the metropolitan transportation plan, linking investment priorities to those performance targets.

“(I) Report on performance-based planning processes.—

“(1) IN GENERAL.—The Secretary shall submit to Congress a report on the effectiveness of the performance-based planning processes of metropolitan planning organizations under this section, taking into consideration the requirements of this subsection

“(2) REPORT.—Not later than 5 years after the date of enactment of the MAP–21, the Secretary shall submit to Congress a report evaluating—

“(A) the overall effectiveness of performance-based planning as a tool for guiding transportation investments;

“(B) the effectiveness of the performance-based planning process of each metropolitan planning organization under this section;

“(C) the extent to which metropolitan planning organizations have

achieved, or are currently making substantial progress toward achieving, the performance targets specified under this section and whether metropolitan planning organizations are developing meaningful performance targets; and

“(D) the technical capacity of metropolitan planning organizations that operate within a metropolitan planning area of less than 200,000 and their ability to carry out the requirements of this section.

“(3) PUBLICATION.—The report under paragraph (2) shall be published or otherwise made available in electronically accessible formats and means, including on the Internet.

IV. SEC. 1113. CONGESTION MITIGATION AND AIR QUALITY IMPROVEMENT PROGRAM.

“(c) Special rules.—

“(1) PROJECTS FOR PM-10 NONATTAINMENT AREAS.—A State may obligate funds apportioned to the State under section 104(b)(4) for a project or program for an area that is nonattainment for ozone or carbon monoxide, or both, and for PM-10 resulting from transportation activities, without regard to any limitation of the Department of Transportation relating to the type of ambient air quality standard such project or program addresses.

“(2) ELECTRIC VEHICLE AND NATURAL GAS VEHICLE INFRASTRUCTURE.—A State may obligate funds apportioned under section 104(b)(4) for a project or program to establish electric vehicle charging stations or natural gas vehicle refueling stations for the use of battery powered or natural gas fueled trucks or other motor vehicles at any location in the State except that such stations may not be established or supported where commercial establishments serving motor vehicle users are prohibited by [section 111](#) of title 23, United States Code.

“(3) HOV FACILITIES.—No funds may be provided under this section for a project which will result in the construction of new capacity available to single occupant vehicles unless the project consists of a high occupancy vehicle facility available to single occupant vehicles only at other than peak travel times.”;

“(k) Priority for use of funds in PM2.5 areas.—

“(1) IN GENERAL.—For any State that has a nonattainment or maintenance area for fine particulate matter, an amount equal to 25 percent of the funds apportioned to each State under section 104(b)(4) for a nonattainment or maintenance area that are based all or in part on the weighted population of such area in fine particulate matter nonattainment shall be obligated to projects that reduce such fine particulate matter emissions in such area, including diesel retrofits.

“(2) CONSTRUCTION EQUIPMENT AND VEHICLES.—In order to meet the requirements of paragraph (1), a State or metropolitan planning organization may elect to obligate funds to install diesel emission control technology on nonroad diesel equipment or on-road diesel equipment that is operated on a highway construction project within a PM2.5 nonattainment or maintenance area.

“(l) Performance plan.—

“(1) IN GENERAL.—Each metropolitan planning organization serving a transportation management area (as defined in section 134) with a population over 1,000,000 people representing a nonattainment or maintenance area shall develop a performance plan that—

“(A) includes an area baseline level for traffic congestion and on-road mobile source emissions for which the area is in nonattainment or maintenance;

“(B) describes progress made in achieving the performance targets described in section 150(d); and

“(C) includes a description of projects identified for funding under this section and how such projects will contribute to achieving emission and traffic congestion reduction targets.

“(2) UPDATED PLANS.—Performance plans shall be

updated biennially and include a separate report that assesses the progress of the program of projects under the previous plan in achieving the air quality and traffic congestion targets of the previous plan.

“(m) Operating assistance.—A State may obligate funds apportioned under section 104(b)(2) in an area of such State that is otherwise eligible for obligations of such funds for operating costs under chapter 53 of title 49 or on a system that was previously eligible under this section.”.