Senate Commerce Reviews AV Priorities

After months of deliberation and over 150 meetings with stakeholders, the Senate Commerce Committee is edging closer to introducing legislation to foster automated vehicle (AV) development.

On June 13, Chairman John Thune (R-SD), Ranking Member Bill Nelson (D-FL), and Sen. Gary Peters (D-MI) announced a set of bipartisan principles that the committee will use in crafting AV legislation. The announcement came a day before Senate Commerce held a full committee hearing titled Paving the Way for Self-Driving Vehicles.

“These principles underscore our commitment to prioritizing safety, fixing outdated rules, and clarifying the role of federal and state governments,” Thune said in a written statement.

On the other side of the Hill, the majority staff of the House Energy & Commerce Committee (E&C) is also making progress on legislative proposals for AVs. The Senate Commerce principles and internal documents from House E&C found that both chambers are closely aligned in their legislative efforts. (Ed. Note: ETW’s comparative analysis of the House and Senate initiatives can be found elsewhere in this issue.)

Chao Defends Budget On Capitol Hill

Transportation Secretary Elaine Chao testified before the House Appropriations Committee this week on the Trump Administration’s fiscal 2018 budget request for the Department of Transportation.

At a June 15 hearing of the Subcommittee on Transportation and Housing, Chao said that the President’s budget represents a “bold vision for transportation infrastructure” and stressed that the budget fully funds the Highway Trust Fund spending commitments for 2018 made by the FAST Act. Her prepared statement went into more detail defending the significant program cuts and proposed program eliminations on the discretionary side of the federal budget:
The Senate Commerce’s six principles were released a day before the full Senate Commerce Committee held a hearing to discuss the challenges around developing AV regulations with four industry experts:

- **Mr. Mitch Bainwol**, President and Chief Executive Officer, Alliance of Automobile Manufacturers (testimony)
- **Mr. Rob Csongor**, Vice President and General Manager of Automotive Business, NVIDIA Corporation (testimony)
- **Mr. John Maddox**, President and Chief Executive Officer, American Center for Mobility, Ypsilanti, Michigan (testimony)
- **Ms. Colleen Sheehy-Church**, National President, Mothers Against Drunk Driving (MADD) (testimony)

By and large, committee members showed tremendous enthusiasm for the benefits of AV technology – and especially its potential to reduce or eliminate the 35,000 annual traffic fatalities. This was reinforced in the testimony of Sheehy-Church from MADD, who lost her 18-year old son to a collision involving an intoxicated driver. She called AVs as a cure for the preventable tragedy of traffic deaths.

“In terms of self-driving, I’m looking at [vehicle automation levels] 4 and 5 as being that vaccine over time,” she said.

But the process by which the National Highway and Traffic Safety Administration (NHTSA) will certify the safety of AV technology remains a major question. Currently, the federal government requires that vehicles sold in the U.S. comply with Federal Motor Vehicle Safety Standards (FMVSS), a set of prescriptive standards for vehicle design and performance that are mostly focused on physical components rather than software.

“Current federal motor vehicle safety standards do not address automated technologies, and in some cases directly conflict with them. We are looking for ways to address these conflicts in dated rules without weakening the important vehicle safety protections they provide,” said Thune.

Regulating AV technology is an entirely different beast, as they rely on a combination of software, sensors, and traditional vehicle components that must all operate in lockstep. To complicate matters further, AV developers will need their AVs to drive millions of miles to demonstrate that they can operate safely and avoid collisions in even the most complex and difficult situations.

There is not yet a consensus on a process by which NHTSA should regulate AV safety, let alone whether it will be extremely expensive and time-consuming or optimized to be cheap and expedient. In fact, it might simply be too early to establish a process - truly autonomous vehicles (at SAE automation levels 4 and 5) still do not exist, and will likely not be available for a number of years.

“It is crucial that AV testing and development programs include three key complementary and fully integrated tools,” Maddox stated in his written testimony: testing on controlled tracks that simulate a variety of environments, real-world testing
on public roads, and computer simulations that can rapidly test AV software’s reaction to any situation. Until a consensus is reached on AV testing, lawmakers in both the House and Senate are considering the stopgap measure of raising the cap on FMVSS exemptions from 2,500 vehicles to 100,000.

Bainwol indicated that an increased cap would allow AV developers to test and deploy vehicles that do not comply with FMVSS that were written with humans in mind (e.g., mandating that all motor vehicles include steering wheels, pedals, and mirrors).

Ultimately this will provide AV developers with the opportunity to place more AVs on public roads and gain valuable insights into how they will operate in real-world conditions. At the same time, NHTSA will be able to design a method for testing AV safety and eventually establish FMVSS for AV design and performance.

To begin this process, Maddox recommended developing voluntary standards that could then be written into FMVSS. “[Every tech-related FMVSS] was established through voluntary standards first,” he said.

While consumer acceptance is important for the adoption of AVs, people with limited mobility will enjoy the greatest benefits through a concerted effort on behalf of both the public and private sector. Members of both parties emphasized this point throughout the hearing, citing opportunities to enhance mobility for people with disabilities, seniors, and underserved communities.

“Offering new means of accessible transportation, including for our nation’s seniors, and lessening congestion will improve productivity and efficiency in all of our lives,” Thune noted in his opening remarks.

Sen. Maggie Hassan (D-NH) reiterated the importance of ensuring that people with disabilities are considered throughout the process of AV development and deployment. She proceeded to ask the panel how the industry and government could ensure that people with limited mobility are part of the conversation around AVs.

Maddox stated that gathering input from people with disabilities now is “critical” in order to avoid significant accessibility issues similar to those that the disability community currently faces.

"Demonstration programs really are key… that will provide an opportunity for folks who don’t have equitable [mobility access],” he said.
House Appropriations Starts Moving FY18 Bills

The House Appropriations Committee this week approved the first of the fiscal 2018 appropriations bills, despite the failure of the House to tell the committee how much money they will be able to spend.

On June 15, the committee approved a draft bill providing $184.8 billion in new budget authority for the Department of Veterans Affairs and for the military construction activities of the Defense Department. $96.0 billion of that money is “mandatory” spending and must be provided lest the federal government be opened up to (successful) lawsuits, so that money is exempt from budget caps. Another $638 million is designated as “overseas contingency operations” money (a work-around of the spending ceilings that was originally for the wars in Afghanistan and Iraq but which has morphed into an overall Pentagon budget supplement) and is also not subject to budget caps.

The remaining $88.2 billion is “discretionary” spending subject to the annual spending caps in the Budget Control Act. About $10.6 billion of that is subject to the annual cap on defense spending and the remaining $77.7 billion is subject to the cap on non-defense spending.

The Appropriations Committee also adopted a report allocating the $88.2 billion in discretionary budget authority to the subcommittee that produced the bill. The report said “Given at this time there is no fiscal year 2018 concurrent resolution on the budget, the Committee, in developing this interim allocation, has been guided by the current law defense and nondefense totals pursuant to the Budget Control Act of 2011 which are enforced through sequestration.”

Presumably, Appropriations chairman Rodney Frelinghuysen (R-NJ) has already given each subcommittee a budget total, but the public won’t know what these totals are until each bill is unveiled (unless the House actually passes a budget resolution or takes other action to give Appropriations a formal total to subdivide). But using the BCA cap levels, the panel’s adoption of the MilCon/VA bill leaves $437.2 billion left over for the rest of the non-defense budget. In 2017, the Transportation-HUD bill used up about $57.4 billion of the non-defense discretionary total, so under a budget freeze, T-HUD would need about 13 percent of the remaining non-defense dollars.

It is hard to draw grand conclusions based on one bill, but the President’s FY18 budget request for discretionary programs had three main components: 1. Significantly cut back on use of the OCO loophole. 2. Increase regular defense spending. 3. Decrease non-defense spending to compensate. The budget also called for a new law adjusting the spending caps consistent with points 2 and 3.

The MilCon/VA bill does increase spending for defense activities from $7.7 billion in 2017 to $9.6 billion in 2018.
House, Senate Aim for Similar AV Legislation

House and Senate committee leaders appear to be in alignment on their goals for automated vehicle (AV) legislation just weeks – and perhaps months – before anything has been formally introduced in either chamber.

On Tuesday, June 13, the Senate Commerce Committee released a statement of bipartisan principles for that AV legislation that is currently being crafted under the leadership of Chairman John Thune (R-SD), Ranking Member Bill Nelson (D-FL), and Senator Gary Peters (D-MI).

The statement of principles falls short of defining the actions that Senate Commerce is considering. However, last month ETW obtained an internal document summarizing 16 potential measures under consideration by House Energy & Commerce Committee (E&C) that indicated both chambers are largely in agreement regarding how AVs should be regulated.

While the proposals from both chambers are still in flux, Reuters recently reported that E&C’s legislative package includes 14 bills with as many as 45 pages. ETW recently obtained a recent discussion draft that shows two proposed bills on preemption were removed from the legislative package or rolled into other bills.

ETW has examined the Senate Commerce principles to identify where they may align with the proposals being considered by the House – they are displayed side-by-side below.

**Senate Principle: Prioritize Safety** through considering short-term and long-term regulatory oversight of AVs, with the understanding that new Federal Motor Vehicle Safety Standards “should eventually be set.”

- **House Bill: PAVE (Practical Autonomous Vehicle Exemptions) Act.** Increases the cap on Federal Motor Vehicle Safety Standards (FMVSS) exemptions that the Secretary of Transportation can grant from 2,500 to 100,000 for vehicles that do not comply with FMVSS – as long as they are just as safe or more safe than compliant vehicles.

- **House Bill: SHARES (Sharing Autonomous Vehicle Records with Everyone for Safety) Act.** Instructs USDOT to create a council for companies to share event, incident, and crash data without risking public dissemination or leaking proprietary information. This is written in the interest of ensuring that the industry “doesn’t make the same mistake twice” with AVs by encouraging collaboration among AV developers. The council would issue recommendations to the Secretary and Congress within two years.

- **House Bill: GUARD (Guarding Automakers Against Unfair Advantages Reported in Public Documents) Act.** This is intended to prevent leaks of proprietary information by requiring NHTSA to treat data about collisions, cybersecurity, and vehicle design as confidential business information.
**Senate Principle:** Promote Continued Innovation and Reduce Existing Roadblocks by developing new FMVSS for AVs, which will take “significant time.” Until then, legislation must allow the technology to move forward while development is underway – “while also addressing incompatibility with old rules that were not written with self-driving vehicles in mind.”

- **House Bill:** ROAD (Renewing Opportunities for Autonomous Vehicle Development) Act. Expands renewals for FMVSS exemptions to last five years and authorizes the Secretary to “extend exemption renewals if requested.”
- **House Bill:** MORE (Maximizing Opportunities for Research and Enhancement of) AVs Act. Currently, 49 U.S.C. 30112(b) allows automakers to introduce non-FMVSS compliant vehicles into interstate commerce if they agree not to sell the vehicle when testing is complete. This would expand the law to allow equipment manufacturers and distributors to also conduct interstate tests of AVs.
- **House Bill:** AV PROMPT (Pre-Market Approval Reduces Opportunities for More People to Travel Safely) Act. Prohibits the Secretary from establishing a pre-market approval or pre-certification process that would require USDOT to assess the vehicle’s safety before it is manufactured or sold.

**Senate Principle:** Remain Tech Neutral by not passing legislation that would favor certain business models of some developers over others.

Impetus: The “SAVE Acts” that have been introduced in state legislatures (and for which automakers advocated) drew considerable opposition this year because they sought to prevent tech firms and other non-automakers from developing AVs.

- **House Bill:** None.

**Senate Principle:** Reinforce Separate Federal and State Roles by enforcing the delineation of responsibilities between the federal and state governments. This is to preempt states from passing regulations that establish motor vehicle standards, while allowing them to focus on their responsibilities in the realms of insurance, traffic laws, driver education, and infrastructure upkeep.

- **House Bill:** INFORM (Increasing Information and Notification to Foster Openness Regarding Autonomous Vehicle Matters to States) Act. Directs NHTSA to inform state officials when it issues FMVSS exemptions for highly autonomous vehicles that will be tested or deployed in their state.
- **House Bill:** Defines highly autonomous vehicles but, for some reason, does not use the widely accepted and industry-backed definitions for levels of vehicle automation that were written by the Society of Automotive Engineers (SAE) and adopted by NHTSA.
- **House Bill:** LEAD’R (Let NHTSA Enforce Autonomous Vehicle Driving Regulations) Act. “Establishes NHTSA as the sole regulatory authority” for regulating AVs and expressly prohibits other government entities from prescribing motor vehicle safety standards for AVs. However, it would allow states and their political subdivisions to prescribe safety standards for AVs and AV components that the state purchases for its own use. (This may include provisions from the TEST Act, summarized at the end of this article.)
Senate Principle: Strengthen Cybersecurity by ensuring that AV developers consider it to be “an integral feature of self-driving vehicles from the very beginning of their development.”

- **House Bill: Highly Autonomous Vehicle Cybersecurity Advisory Council Act.** Directs USDOT to form a council to advise on cybersecurity performance metrics for AV testing, deployment, and software updates. Interestingly, “supply chain risk management” is included as one of the areas in which that the council will issue recommendations.

- **House Bill: MEMO (Managing Government Efforts to Minimize Obstruction) Act.** Instructs NHTSA and the Federal Trade Commission (FTC) to play nice and stay in their respective lanes when it comes to AV cybersecurity. NHTSA and FTC would have to sign a memorandum of understanding (MOU) that would prevent overlap and duplication in their oversight of privacy and cybersecurity.

Senate Principle: Educate the Public to Encourage Responsible Adoption of Self-Driving Vehicles through collaboration between the public and private sector to educate consumers on the capabilities and limitations of AVs.

- **House Bill: Disability Mobility Advisory Council Act.** Directs the Secretary to create a Disability Mobility Advisory Council composed of representatives from the disability community, academics, directors of independent living centers, and the private sector. This group will submit recommendations to Congress and the Secretary on how the federal government can advance mobility access to the disabled communities while AVs are being tested and deployed.

- **House Bill: Improving Mobility Access for Underserved Populations and Senior Citizens Advisory Council Act.** Along the same lines as the disability council proposal, this would instruct the Secretary to establish an advisory council to provide recommendations on how AVs can enhance mobility for seniors and “populations underserved by traditional public transportation services.”

- **House Bill: DECAL (Designating Each Car’s Automation Level) Act.** This requires manufacturers to place highly visible stickers on vehicles for sale that indicate the vehicle’s level of automation. This only applies to levels 3, 4, and 5.

- **House Bill: EXEMPT (Expanding Exemptions to Enable More Public Trust) Act.** Expands the Secretary’s authority to issue FMVSS exemptions for AVs that would promote public adoption and acceptance, or increase mobility for people with disabilities – provided that the vehicle is as safe or safer than vehicles that comply with FMVSS.

2 Proposals Removed from Recent E&C Draft

The TEST (Testing Enhances Safer Technology) Act may have been removed altogether or rolled into the LEAD’R Act, which reinforces the federal role in regulating motor vehicles. The significant difference between the two was that the TEST Act would preempt states from passing laws to restrict the testing of up to 250 AVs in the state.
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**FORWARD (Focusing Our Resources Wisely & Avoiding Retroactive Decisions) Act**, which established that only NHTSA could require a Safety Assessment Letter (SAL) prior to testing. This was a response to states considering policies that would require AV manufacturers to submit their SALs prior to testing or deploying AVs. This would have reinforced the federal role in regulating FMVSS, but this language may have been included in the full text of the legislation.

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**New Eno Report Calls for Improvements To U.S. Aviation Certification Process**

The United States has the safest airspace in the world. Maintaining that level of safety means ensuring that all civil aviation products and articles meet rigorous standards. The Federal Aviation Administration (FAA) sets these standards and is responsible for overseeing these processes. The high level of safety that the U.S. aviation industry enjoys today is due to the careful and precise certification processes that the FAA maintains.

However, with rapid pace of change in the aviation industry, we run the risk of allowing these safety standards to slip, endangering thousands of lives. Key industry stakeholders have already raised concerns about the efficiency and functionality of the FAA’s certification and approval processes.

In order to ensure the continued safety and viability of the U.S. aviation industry reform is needed. The FAA needs to adapt to new technologies while also simultaneously maintaining high standards for safety at a time when government resources are scarce and demand from the industry is high.

Eno’s latest report highlights the issues with the current certification procedures and recommends key policy reforms. It focused on three specific areas:

- **Aviation products and their components**
- **Air traffic control and air traffic controllers**
- **Repair stations**

Join the authors at **4:00pm ET on Monday, June 19** for a webinar discussion on the report’s findings. Eno’s **Robert Puentes** and **Rui Neiva** will review the policy recommendations and answer questions from listeners.

Click [here](#) to register for the webinar.
The first Eno Future Leaders Development Conference (LDC) was held in 1993 as a means of bringing some of the best and brightest graduate students in transportation to the nation's capital to gain a better understanding of how U.S. transportation policy is crafted. The response to that program was overwhelming—the students and their universities thought it a highly valuable "inside the Beltway" look at the policy development process. The speakers, prominent individuals from across the transportation sector, enjoyed the opportunity to address the enthusiastic future leaders.

Since then, the Eno Center for Transportation has conducted the conference on an annual basis. Each university and college with a transportation program is invited to nominate one student each year; the Center's Board of Regents review the nominations and select the participants for the program. Upon completion of the conference, participants become known as Eno Fellows and become members of an alumni network of more than 400 former fellows.

The following 20 individuals were selected to participate in the 2017 Eno Future Leaders Development Conference:

- **Stephanie Amoaning-Yankson**, Georgia Institute of Technology (Lillian Borrone Alumni Award Designee)
- **Anne Brown**, University of California, Los Angeles (GAR Foundation Award Designee)
- **Leslie Brown**, University of Florida
- **Cat Callaghan**, University of California, Los Angeles (Diane Woodend Jones, WTS Scholarship Designee)
- **Trilce Encarnación**, Rensselaer Polytechnic Institute (Conference of Minority Transportation Officials Award Designee)
- **Nick Ferenchak**, University of Colorado Denver (Tom Larson Fellowship Designee)
- **Marc Fialkoff**, Virginia Tech (Charles Koch Award Designee)
- **Edward Forscher**, University of California, Berkeley
- **Masoud Ghodrat Abadi**, Oregon State University
- **Karina Hermawan**, University of California, Irvine (Rodney Slater Award Designee)
- **Kyle Holland**, San Jose State University: Mineta Transportation Institute
- **Samaneh Khazraeian**, Florida International University
- **Elease McLaurin**, University of Wisconsin-Madison (COMTO William Coleman Jr. Award Designee)
- **Anusha Musunuru**, University of Utah
- **David Proffitt**, University of Utah
- **Tariq Usman Saeed**, Purdue University
- **Jarrell Smith**, University of Florida (Council of University Transportation Centers Award Designee)
Monday, June 5

In the morning, Robert Puentes, Eno Center for Transportation, provided a state of the transportation union.

Then the fellows were able to hear how lobbying really works from panel Chuck Baker, President, National Railroad Construction & Maintenance Association, Pete Ruane, President & CEO, American Road & Transportation Builders Association, Martin Whitmer, Partner, Whitmer and Worral, and Elaine Nessle, Executive Director, Coalition for America's Gateways and Trade Corridors (CAGTC).

In the afternoon the fellows met with Jeff Davis, Senior Fellow & Editor, Eno Transportation Weekly, Eno Center for Transportation, Jim Tymon, Chief Operating Officer/Director of Policy Management, American Association of State Highway Transportation Officials, Beth Osborne, Senior Transportation Advisor & Director of Technical Assistance Program, Transportation for America, and Emily Goff, Senior Policy Advisor, Committee on the Budget, House of Representatives to talk about sustainable transportation funding.

Immediately following this the fellows were given a Capitol Hill briefing by Jennifer Deci, Professional Staff Member (Mass Transit), Senate Committee on Banking, Housing and Urban Affairs, Devon Barnhart, Professional Staff Member, U.S. Senate Committee on Commerce, Science, and Transportation, Patrick Fuchs, Professional Staff Member, U.S. Senate Committee on Commerce, Science, and Transportation, and Rebecca Higgins, Professional Staff Member, Committee on Environment and Public Works (EPW).

Tuesday, June 6

At the beginning of the day the fellows were given a glimpse inside the U.S. Department of Transportation by Rob Ritter, Managing Director, Office of Innovative Finance Support, Federal Highway Administration & 1998 Eno Fellow, Matt Welbes Executive Director, Federal Transit Administration, Joel Szabat, Executive Director, Maritime Administration, Barbara McCann, Director, Office of Policy Development, Strategic Planning and Performance, Office of the Secretary, U.S. DOT, Paul Nissenbaum, Associate Administrator for
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Railroad Policy and Development, Federal Railroad Administration, and Danielle Rinser, Office of Outreach and Project Development, Build America Bureau, U.S. DOT.

In the afternoon the fellows were given a presentation on local and state level transportation by Nick Donohue, Deputy Secretary, Virginia Department of Transportation, Shyam Kannan, Managing Director of Planning, Washington Metropolitan Area Transit Authority, and Emeka Moneme, Deputy Executive Director, Federal City Council.

After the presentation on local and state transportation, the fellows listened to Mitch Warren, Executive Director, Northeast Corridor Commission, Doug Allen, CEO, Virginia Railway Express, and Ed Courtemanche, Director, Operations and Service Planning, Amtrak.

In the evening, the fellows participated in a Trivia Night, sponsored by Transurban, and co-hosted with the Young Professionals in Transportation, for a great night of networking and transportation-related trivia.

Wednesday, June 7

The fellows started out their morning with a presentation on transportation technologies by Samrat Valani, Director of Technology, Transurban, Kim Lucas, Bicycle and Pedestrian Program Specialist, District Department of Transportation, Jessica Nigro, Manager, Outreach and Innovation Policy, Daimler North America Corp., and Gregory Rodriguez, Of Counsel, Best Best & Krieger LLP.

The fellows then had the opportunity to hear from Michael P. Jackson, Former Deputy Secretary for the U.S. DOT (2001-2003) and Department of Homeland Security (2005-2007), Paul Kledzik, Acting Director, Office of Safety Recommendations and Communications, National Transportation Safety Board, Ian M. Grossman, Vice President of Member Services & Public Affairs, American association of Motor Vehicle Administrators.

In the afternoon the fellows heard a presentation on the aviation industry and federal policy by Rob Britton, Principal, AirLearn, Dorothy Robyn, Independent Consultant and Former Special Assistant to the President for Economic Policy, Bradley Mims, President, Conference of Minority Transportation Officials & Board of Directors, Metropolitan Washington Airports Authority, and John J. Fearnside, CEO, MJF Strategies.

Thursday, June 8

On the last day of the conference the fellows heard from Emil Frankel, Senior Fellow, Eno Center for Transportation, Vicky Arroyo, Executive Director, Georgetown Climate Center, Georgetown Law, and Michael Grant, Vice President, ICF International on sustainability and climate change in transportation.

The fellows then took part in a presentation on performance measures of sustainability and transportation that was led by Jeff Paniati, Executive Director & CEO, Institute of Transportation Engineers, and Kanti Srikanth, Director of Planning, Metropolitan Washington Council of Governments.
In the afternoon the fellows participated in a roundtable discussion with transportation leaders that included Jane Garvey, former Federal Aviation Administration Administrator and Deputy Administrator of the Federal Highway Administration, Bob Prince, former Vice President of AECOM, Martin Wachs, Distinguished Professor Emeritus of Urban Planning at the Luskin School of Public Affairs, UCLA, Tom O'Brien, Executive Director, Center for International Trade and Transportation, California State University Long Beach, and Diane Woodend Jones, Chair, WTS International and Lea+Elliot, Inc.

Members of the Eno Board of Directors then discussed career development with the fellows. The conference came to a close with a reception and banquet. The fellows received their certificates and officially joined an alumni network of over 400 Eno fellows. Additionally, the Eno Center for Transportation honored Martin Wachs, the recipient of the Thought Leader Award, Bob Prince, the winner of the Wilbur S. Smith Friend of Eno Award and Jane Garvey, the recipient of the Lifetime Achievement Award. Garvey was the keynote speaker at the banquet.

View more photos of the LDC Awards Dinner
Last Friday, the White House announced President Trump’s nominee for Deputy Administrator of the Federal Aviation Administration (FAA), while the day before, the President’s nominees for Under Secretary of Transportation and for the National Transportation Safety Board had their Senate confirmation hearing.

FAA. The White House announced on June 9 that President Trump will nominate longtime aviation expert Dan Elwell to serve as Deputy Administrator of the FAA.

Elwell started his private sector career in aviation as a pilot for American Airlines but got into the policy field when he took a temporary fellowship in the office of Senator Ted Stevens (R-AK) and the Senate Defense Appropriations Subcommittee. When the fellowship ended, he went back to American, which (logically) reduced his flying hours and also put him to work in their government affairs office, not only on international aviation alliances and negotiations but also on the transformative aviation security legislation that passed in the 2001-2003 period.

Former FAA Administrator Marion Blakey hired Elwell to be Assistant FAA Administrator for Aviation Policy, Planning and Enforcement in mid-2006. After Blakey left FAA, Elwell later joined her at the Aerospace Industries Association, serving as Vice President for Civil Aviation from 2008-2013. Elwell then left AIA in February 2013 to join Airlines for America as Senior Vice President for Safety, Security and Operations. He left in January 2015 to hang out his own shingle as a consultant.

Elwell graduated from the Air Force Academy in 1983 and served on active duty in the Air Force and the Air Force Reserve, retiring as a Lieutenant Colonel. For this reason, he is only eligible for the Deputy Administrator post (per 49 U.S.C. §106(d)(1)) because current FAA Administrator Michael Huerta did not serve as a military officer.

At present, the FAA is structurally unique among USDOT operating modes, for several reasons, two of which leap out here. The FAA is the only operating mode where the agency head serves for a fixed term (five years) instead of at the pleasure of the President, and the FAA is the only mode where the second-in-command requires Senate confirmation.

Huerta’s five-year term expires in January 2018. So Elwell’s nomination is not just about who will serve as Deputy at FAA starting this summer/fall (whenever Elwell is confirmed, as he presumably will be); it’s also about who will serve as Acting Administrator for what could be a lengthy period of time starting in January 2018 in the event that the President does not reappoint Huerta (who had extensive Democratic political credentials before joining FAA) to a second five-year term.

(And, of course, Huerta was originally brought into the FAA in June 2010 to serve as Deputy Administrator, but was quickly promoted to Acting Administrator in December 2011 after Administrator Randy Babbitt resigned following his DUI arrest. Huerta was
then nominated formally for the head job and eventually confirmed at the end of 2012 to start his five-year term as Administrator.)

**Nominations hearing.** On June 8, the Senate Committee on Commerce, Science and Transportation held a hearing on three presidential nominations, two of which relate to transportation – the nominations of Derek Kan to be Under Secretary of Transportation for Policy and of Robert Sumwalt III to be reappointed as a member of the National Transportation Safety Board.

Normally, at Congressional hearings, the members want something from the witnesses – information, promises, a juicy quote – therefore, the witness is in a position of some power. But at confirmation hearings, it is the witness who wants approval from the members of the committee, who have all the power. By far the most common answer to a question at a confirmation hearing is “Yes, Senator, I will do that thing you just asked me to do” and this hearing was no exception.

Among the issues on which Kan said some variant on “yes, Senator, I promise to work with you on that” were: revising the Federal Railroad Administration rule on “quiet zones” (Cory Gardner, R-CO); “Safe Streets” road design (Brian Schatz, D-HI); restoring Amtrak service along the Gulf Coast (Roger Wicker, R-MS); stopping foreign governments from subsidizing their airlines (Amy Kobuchar, D-MN); expanding DOT’s proposed national freight network map (Commerce chairman John Thune, R-SD); and advancing safety through positive train control installation (Catherine Cortez Masto, D-NV).

Senators often take the opportunity at hearings to emphasize the local needs of their states, and in this case, it helps that Kan had just finished a cross-country road trip with his family that resulted in him driving through the states of several committee members (South Dakota, Indiana). Kan left the hearing with open invitations to visit the home states of most members of the committee.

Sumwalt faced a different set of questions. Ted Cruz (R-TX) asked about the ongoing NTSB investigation into the July 2016 hot air balloon crash in Texas that killed 16 people. Cruz pointed out that the balloon pilot had 5 DUI arrests and 3 drug arrests, as well as a medical condition, any of which would have prevented him from getting a pilot’s certificate from the FAA – but the FAA presently does not require balloon pilots to be licensed. Sumwalt agreed with Cruz that it does not make sense for balloon-based air tour pilots to be exempt from the certification process that applies to helicopter or airplane-based air tours.

Sumwalt also responded to several safety questions from the panel by referring to the “Top 10 Most Wanted” safety reforms being sought by the NTSB.
The Federal Highway Administration has released the end-of-year 2016 Urban Congestion Report (UCR). The report includes data from the 52 largest metropolitan statistical areas in the United States measuring congestion, travel time, and travel time reliability for trucks and passenger vehicles on the National Highway System.

The data used are a relatively young, uniform, national dataset called the National Performance Management Research Data Set (NPMRDS), which has 24-hour speed and travel time data along the entire NHS. It is currently being used by both the FHWA and various regional transportation organizations to look at current conditions, examine trends, and discuss the performance of the NHS for vehicular traffic.

Overall, 10 of the 52 metropolitan areas improved in all three measures, and 11 declined in all three. Geographically, cities in the Southeast and the West generally saw worsening congestion, while cities in the Northeast generally improved from 2015 to 2016 (with the exceptions of Washington DC and Philadelphia). Across the 52 areas, the number of congested hours increased from 4 hours and 40 minutes in 2015 to 4 hours
and 43 minutes in 2016, the travel time index increased by one point, and the planning time index decreased by 3 points.

The three measures suggest that congestion has not, overall, increased significantly in the largest metropolitan areas in the country over the last year, (or the last two years). Given that national VMT increased by 88 billion miles from 2015 to 2016, such a slow rise in congestion levels may be seen as encouraging – some major metropolitan areas seem to have been able to manage increased demand. Perhaps transportation systems are being planned or engineered better. Perhaps the additional miles driven are not on NHS roads or are not during peak hours. There could also be a spatial mismatch that is lost when comparing averages or the slow increase in congested hours could indeed account for a large amount of these additional miles driven.

The UCR gives examples of regions that have used technology interventions to improve travel times on interstate and NHS roads. Variable signage and real-time information were common interventions associated with studies showing improvement in congested condition.

The measures included in the UCR have been used and critiqued for many years. Whether or not the current measures are the best to use when assessing congestion, maintaining a uniform dataset is necessary for effective performance-based planning.

The FHWA contributes to their goal of encouraging performance management at the state and regional level by providing data to agencies and examining the data on a national scale. The MAP-21 system rulemaking requires State DOTs and MPOs to use measures and establish targets for system level of travel time reliability (LOTTR) for interstate and NHS roads. The same rule making also requires truck travel time reliability (TTTR) measures. The NPMRDS dataset provides DOTs and MPOs with data needed to fulfill these MAP-21 requirements.
House Judiciary Approves WMATA Compact Changes

The House Judiciary Committee on June 14 approved, with little debate, two joint resolutions ratifying new policies adopted by Maryland, Virginia, and the District of Columbia relating to the DC-area mass transit agency, the Washington Metropolitan Area Transit Authority (WMATA).

The committee approved House Joint Resolution 76, which grants the consent and approval of Congress for the new interstate compact between MD-VA-DC establishing a new joint Washington Metrorail Safety Commission to oversee WMATA safety. The joint resolution was approved with an amendment adding boilerplate language that Judiciary includes in all interstate compact approval resolutions.

Section 20021 of the 2012 MAP-21 Act required states in which interstate subway or rail transit systems operate to establish joint safety oversight authorities or face partial withholding of their federal mass transit formula funding. Delays in joint enactment by MD-VA-DC led to a February 2017 letter from the Federal Transit Administration to affected states withholding a portion of federal aid for WMATA and for all other transit systems in Maryland and Virginia.

Congressional approval of H. J. Res. 76 will allow the withheld funds to be released to those transit systems.

(Ed. Note: Judiciary Committee ranking member John Conyers (D-MI) was actually a member of Judiciary when it approved the legislation approving the original WMATA interstate compact. In 1966. 51 years ago.)

And the committee also approved House Joint Resolution 92, which grants the consent and approval of Congress for the changes made by MD-VA-DC in response to section 3026 of the FAST Act, which changed the appointment authority for the federal members of the WMATA Board from the head of the General Services Administration to the Secretary of Transportation.

The Judiciary markup is a reminder that Congressional oversight over WMATA is uniquely fractured, to wit:

<table>
<thead>
<tr>
<th>Which Congressional Committees Are Responsible for Metro?</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>There Are Six of Them...</strong></td>
</tr>
<tr>
<td>Mass transit, generally. Mass transit safety. Funding from the Mass Transit Account of the Highway Trust Fund.</td>
</tr>
<tr>
<td>WMATA's governing statute, the National Capital Transportation Act of 1969, as amended.</td>
</tr>
<tr>
<td>Interstate compacts, generally, and the WMATA Compact specifically.</td>
</tr>
</tbody>
</table>
Killing TIGER grants: “With the passage of the FAST Act and the creation of a new competitive grant program, the Department has other opportunities for funding those projects that have nationally or regionally significant characteristics.”

Halting approvals for new projects in the mass transit Capital Investment Grant program: “The Administration is reexamining programs where significant Federal resources are spent on activities that have primarily local benefits—including what fiscal and other tools might be the most appropriate to encourage investment in those jurisdictions.”

Eliminating federal operating subsidies for long-distance Amtrak routes: “Amtrak’s long distance services are used by a relatively small number of passengers. These trains are very expensive to operate and maintain; and account for much of Amtrak’s operating losses. The President’s budget recognizes this is an area with a low return on investment and instead asks us to concentrate our resources on other portions of Amtrak’s system.”

Eliminating most Essential Air Service subsidy payments: “…many EAS flights are not full and have high subsidy costs per passenger, calling into question the affordability of this program. But this poses a conundrum for all of us, because we recognize how critical the EAS program is to rural areas. To address this situation, the President’s Budget requests support for a redesigned program known as the Transportation Aviation Assistance to Remote Areas (TAARA) program. This new program will be funded exclusively by mandatory overflight fees at $119 million. By reworking the old EAS program, we will help reset the path for remote air assistance going forward. The objective is to sustain air service to rural locations most in need, and to establish relevant objective criteria for making those determinations.”

Subcommittee chairman Mario Diaz-Balart (R-FL) started off the hearing by criticizing the Trump Administration’s plan to take the air traffic control system away from the Federal Aviation Administration and place it in a non-governmental non-profit corporation. Diaz-Balart said that air traffic control is a monopoly no matter who provides it, and he was concerned that members of the public concerned about air routes, noise, etc. would face an unaccountable corporate board running said monopoly. (Ed. Note: It’s not quite accurate to say that air traffic control is inherently a federal monopoly. Each airport tower works on its own, and other countries allow each airport to choose its own private ATC provider for its tower. (The FAA actually funds this in a number of instances through its privatized contract tower program.) Providing en-route ATC between cities, however, is a natural monopoly.)

Chao responded that citizens would have the same recourse under the Administration plan that they have now when dealing with the FAA, and added that regulation of airport noise would stay with the FAA and not the new ATC corporation under the Administration plan. Chao did not address the issue of whether or not public interest representatives should serve on the ATC corporation’s board of directors.
The initial rounds of questioning from Democrats were not related to the transportation budget but instead focused on a new Trump Administration policy to deny requests for information from any members of Congress who are not committee or subcommittee chairmen (which, until January 2019 at the earliest, means denying requests for information from Democrats).

Chao tried to walk a fine line, promising on a personal level that she would be responsive to Democratic requests for information as well as Republican requests but also citing chapter and verse from the recent Justice Department opinion which held that only committee and subcommittee chairmen are entitled to information in the oversight process (unless either chamber of Congress passes a formal resolution of inquiry requesting information) and that the past practice has been not to provide information to non-chairmen if it would be “overly burdensome” to do so.

One other bit of news came from the hearing – in response to a question from Charlie Dent (R-PA) on how to pay for infrastructure, Chao said that while early discussions at the White House had focused on using comprehensive tax reform as a “pay-for” for infrastructure spending, that has now changed, and Treasury Secretary Mnuchin has now said that infrastructure funding will not be a part of tax reform. Chao said that while a federal gas tax increase is a “very quarrelsome issue,” “nothing is off the table.” In a separate response to Rep. Hal Rogers (R-KY), she noted that there are a “plethora of ways” to pay for surface transportation.

Several questions revolved around what happens if the Appropriations Committees ignore the requests to kill the TIGER and transit new start programs. She said several times that DOT would “respond to the will of the Congress” and that if there are future appropriations dictated by Congress, the Department would have no choice but to make those funds available. She cited the line item in the FY 2017 omnibus appropriations bill for the Caltrain electrification project as being the reason that she signed the agreement approving that project.

(What neither Chao nor committee members mentioned was that if the Administration does not request a project, and Congress then tries to pass a bill giving funding to that specific project, the bill then violates Congress’s self-imposed ban on earmarks. This year’s appropriations for the CIG program will be very interesting in this regard.)

Chao did not really respond to a question from subcommittee ranking member David Price (D-NC) that focused on the disconnect between a budget that proposes no CIG grants for new projects, ever, but which still moves potential new projects from the project development phase to the engineering phase.

Other issues raised included the effect that hours-of-service rules have on livestock carried by trucks, the need for state maritime academies to get new training ships, and a lot of vague talk about emerging technologies being a good thing.

Video of the hearing can be viewed here.
**Upcoming Capitol Hill Events**

**Tuesday, June 20** – Senate Environment and Public Works – Subcommittee on Fisheries, Water and Wildlife – subcommittee hearing on **financing and funding water infrastructure** – 2:30 p.m., SD-406 Dirksen.

**Wednesday, June 21** – Senate Commerce, Science and Transportation – full committee hearing on **the nomination of David Pekoske to head TSA** – 10:00 a.m., SR-253 Russell.

**Thursday, June 22** – House Transportation and Infrastructure – Subcommittee on Railroads, Pipelines and Hazardous Materials – subcommittee hearing on **intercity passenger rail service** (witness list [here](#)) – 10:00 a.m., 2167 Rayburn.

### Status of Trump Administration Transportation Nominations

<table>
<thead>
<tr>
<th>Department of Transportation</th>
<th>Derek Kan</th>
<th>Under Secretary for Policy</th>
<th>Hearing held 6/8/17</th>
</tr>
</thead>
<tbody>
<tr>
<td>Department of Transportation</td>
<td>Steven Bradbury</td>
<td>General Counsel</td>
<td>Nomination transmitted 6/6/17</td>
</tr>
<tr>
<td>Department of Transportation</td>
<td>Adam Sullivan</td>
<td>Assistant Secretary for Governmental Affairs</td>
<td>Nomination transmitted 5/10/17</td>
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<tr>
<td>DOT - Federal Aviation Administration</td>
<td>Daniel Elwell</td>
<td>Deputy Administrator</td>
<td>Nomination announced 6/9/17</td>
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<tr>
<td>Department of Homeland Security</td>
<td>David Pekoske</td>
<td>Assistant Secretary for TSA</td>
<td>Nomination transmitted 6/6/17</td>
</tr>
<tr>
<td>Nat’l Transportation Safety Board</td>
<td>Robert L. Sumwalt III</td>
<td>Member for a term expiring 12/16/2021</td>
<td>Hearing held 6/8/17</td>
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</tbody>
</table>

### Status of Major Transportation and Public Works Legislation, 115th Congress

<table>
<thead>
<tr>
<th>Bill</th>
<th>Latest House Action</th>
<th>Latest Senate Action</th>
<th>Final Action</th>
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<tbody>
<tr>
<td>FY 2018 Congressional Budget Resolution</td>
<td>Possible markup week of June 19</td>
<td>Unknown</td>
<td></td>
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<tr>
<td>FY 2018 Transportation-HUD Appropriations</td>
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<td>FY 2018 Homeland Security Appropriations</td>
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<td>FY 2018 Energy and Water Appropriations</td>
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<tr>
<td>Federal Aviation Admin. Reauthorization</td>
<td>Possible markup by the end of June</td>
<td>First subcommittee hearing held 3/23/17</td>
<td></td>
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<tr>
<td>Infrastructure Legislation</td>
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