

MISSOURI Memo

MISSOURI TRUCKING ASSOCIATION

February 2014 • NO. 2



Mid-Month Update

News from the Capitol . . .

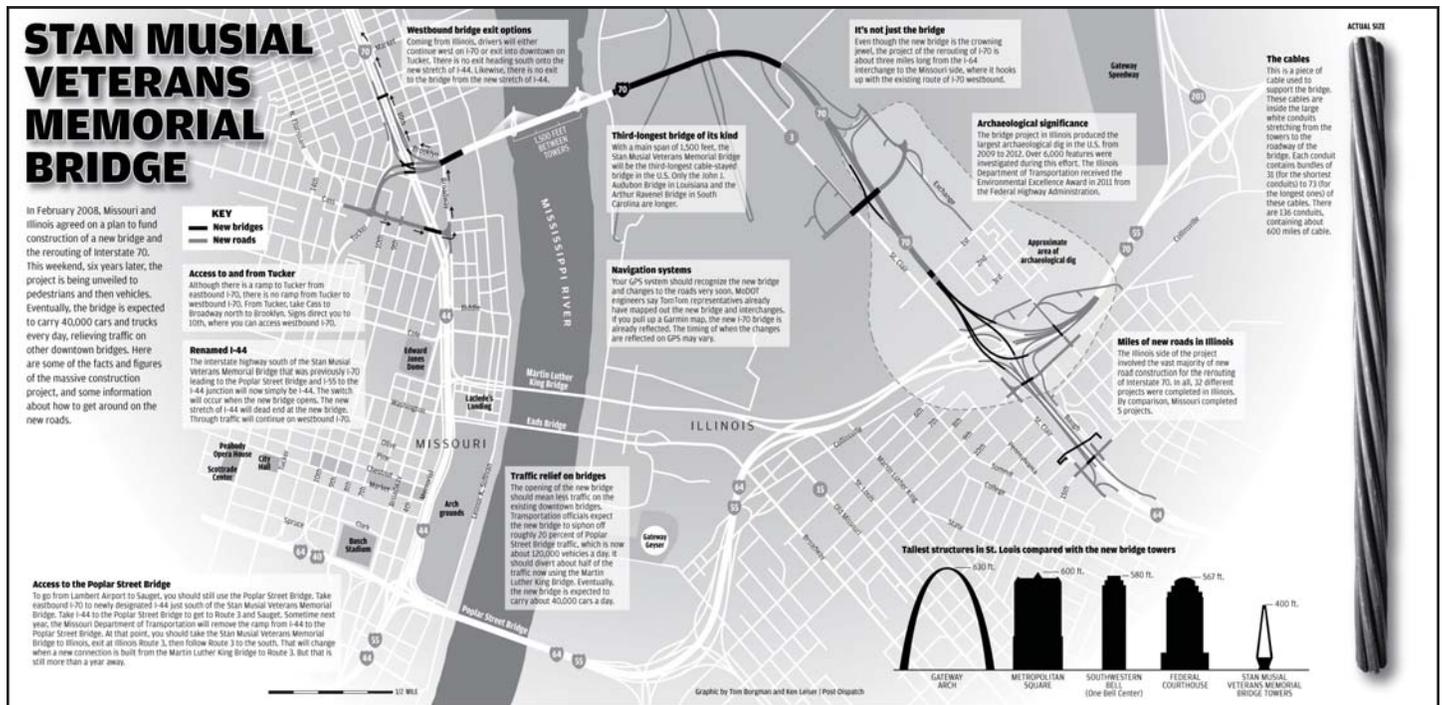
Six weeks into the legislative session and transportation is again grabbing some of the early headlines. This week in the House Transportation Committee a bill (HJR 68) sponsored by Rep. Dave Hinson, identical to the one that almost passed last year which includes a 1% increase to Missouri's sales tax dedicated to transportation for 10 years which will raise around \$700 million annually, was voted out by an overwhelming bi-partisan majority and has been referred to the House Rules Committee. Sen. Mike Kehoe has an identical bill (SJR 48) which will probably be moving at some point this session. Stumbling blocks are still in place as some in the Senate, who were responsible for its unfortunate demise last year, have again made claims that they will fight it again this year.

This week was a special one here at MoTA as we hosted an Executive Committee meeting on Tuesday along with a session the next day for our "Next Generation" group. Both of these groups were able to participate in the legislative process at dinner on Tuesday evening or as a part of the rounds at the capitol on Wednesday. With that, let me encourage you to get involved in our "24 Hours in Jefferson City". It's just 24 hours but tons of opportunity to make contacts and build relationships and all planned by MoTA staff. If you would like to attend, please give us a call at the office.

MoTA is tracking an abundance of bills and commenting on them in committees and in private meetings in legislators' offices. There is plenty to keep MoTA's legislative team busy and we will keep all members up to speed on issues of the day. ▲

Stan Musial Veterans Memorial Bridge

In February, 2008, Missouri and Illinois agreed on a plan to fund construction of a new bridge and the rerouting of Interstate 70. This past weekend, six years later, the project was unveiled to pedestrians and then vehicles. Eventually, the bridge is expected to carry 40,000 cars and trucks every day, relieving traffic on other downtown bridges. Here are some of the facts and figures of the massive construction project, and some information about how to get around on the new roads.





New Projections Show Federal Highway Funding Crisis Deepening

New figures released by the Congressional Budget Office on Feb. 4 estimate that the federal Highway Trust Fund will run out of cash by Sept. 30. Without an infusion of money from increased taxes or General Fund transfers, more than \$50 billion in Fiscal Year 2015 funding for federal highway, transit and highway safety programs - including funds for motor carrier roadside inspections - will evaporate.

CBO reports that an additional \$19 billion will be necessary to keep the program afloat for one year.

A six-year surface transportation bill to replace the current MAP-21 bill, which expires on September 30, will require an extra \$101 billion in funding over and above the revenue expected to be collected from federal highway user fees.

In order to delay HTF insolvency, barring Congressional action, the U.S. Department of Transportation is likely to begin slowing down payments to states, in turn forcing states to put off projects during the height of the summer construction season.

For more information, go to <http://www.trucking.org/ATA%20Docs/News%20and%20Information/Reports%20Trends%20and%20Statistics/02%2006%2014%20-%20CBO%20Feb%202014%20HTF%20Forecast.pdf>. ▲

ATRI Releases White Paper on CSA Impacts on Drivers and Law Enforcement

The American Transportation Research Institute has released Compliance, Safety Accountability: Assessing the New Safety Measurement System and Its Implications – 2013 Update, which expands on ATRI's previous CSA impacts research among commercial drivers and enforcement personnel.

On average, drivers responded to the CSA knowledge test with 42.4 percent accuracy, suggesting that after three years of implementation drivers do not have a clear understanding of CSA. However, on a more positive note carrier-provided CSA training has increased steadily since 2011. Furthermore, driver job security concerns due to CSA have decreased by almost 10 percent over the three-year period. Among enforcement personnel, respondents performed with 66.5 percent accuracy on the CSA knowledge test.

A copy of this report is available from ATRI at <http://atri-online.org/>. ▲

Final Decision on Keystone XL Pipeline Inches Closer

The State Department on February 7 released its final environmental impact statement that finds the proposed \$5.3 billion Keystone XL pipeline from Canada won't exacerbate climate change because the crude will likely be extracted with or without the project. The publication of the statement starts a 90-day national interest determination process that will ultimately lead to a final decision on whether or not to approve the cross-border construction permit by both the State Department and President Obama.

The finding was similar to the conclusions in a draft environmental impact statement issued last April. It remains to be seen what recommendation the State Department will forward to the President following the 90-day comment and evaluation period. ▲

IRS After Delinquent HVUT

In the fall of 2011, the filing season for the federal heavy vehicle use tax was extended several months, from the ordinary due date of the tax, August 31, until the end of November, because Congress was late that year in extending the tax itself. Moreover, since carriers must show proof of payment of the HVUT before renewing the registration of vehicles subject to the tax, IRS waived this requirement for renewals from July through November 2011, and allowed carriers to renew by showing their 2010 filing instead. Evidently some carriers got their registrations renewed in this fashion, and then neglected to pay the HVUT. IRS says it is now contacting such taxpayers to collect the delinquent amounts. The real message may well be: Pay up before IRS finds you! For more information, contact Joe Mazzuca at IRS, Joseph.a.mazzuca@irs.gov or 630-493-5008. ▲

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NLRB Re-Issues Proposed "Quickie Election" Rule

The National Labor Relations Board re-issued proposed rules to amend its representation case procedures in an attempt to speed up the time between filing of a union petition for representation and the Board-ordered election. Colloquially referred to as the "quickie" or "ambush" election rule, the proposal would significantly hamper an employer's ability to exercise its protected right to express "views, argument or opinion" concerning representation. The rule was initially proposed in early 2011 and a modified version was adopted by the Board in Dec. 2011. That rule was successfully challenged in court by a coalition in which ATA participates as improperly adopted by the Board due to failure to have a quorum and ultimately withdrawn. With a full, newly constituted Board, the proposal was voted out 3-2. The proposed rule can be found at <http://www.gpo.gov/fdsys/pkg/FR-2014-02-06/pdf/2014-02128.pdf> and comments are due by April 7, 2014. ▲

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FMCSA Emergency Declarations, Waivers, Exemptions, Permits

The Federal Motor Carrier Safety Administration (FMCSA) is coordinating with some states that have Declared Emergency Declarations. We recommend you check each State's Web site and search for "Issued Emergency Declarations" if you are interested in more details. These declarations trigger the temporary suspension of certain Federal safety regulations, including Hours of Service, for motor carriers and drivers engaged in specific aspects of the emergency relief effort. See 49 CFR 390.23 for the actual emergency regulation.

Regional Declarations can be viewed at: http://www.fmcsa.dot.gov/about/alerts/emergency-declarations_2013.aspx ▲

FMCSA Extends Exemptions; Includes Salt

The Federal Motor Carrier Safety Administration has issued an emergency declaration and extension of state emergency declarations granted in accordance with Title 49 CFR sections 390.23 and 390.25, from Part 390 through 399 of the Federal Regulations, except as otherwise restricted by this declaration.

The emergency exemption is issued as a result of extreme arctic cold weather conditions causing shortages and interruptions in the availability and/or delivery of propane and other home heating fuels throughout the states affected in the Eastern Region to include: New York, Connecticut, Delaware, District of Columbia, Massachusetts, Maryland, Maine, New Jersey, New Hampshire, Pennsylvania, Rhode Island, Virginia, Vermont and West Virginia. The exemption also applies region-wide to the transportation of salt or other ice/snow melt supplies needed to maintain the safety of the roadways.

This declaration provides for the regulatory relief for commercial motor vehicle operations while providing direct assistance supporting the delivery of propane, home heating fuels, salt or other ice/snow melt supplies into the affected areas and consumers in the above mentioned states during the emergency. Direct assistance terminates when a driver or commercial motor vehicle is used in interstate commerce to transport cargo or provide services not directly supporting the emergency relief effort.

Nothing in the declaration shall be construed as an exemption from the controlled substances and alcohol use and testing requirements, the commercial driver's license requirements, the financial responsibility requirements (insurance), applicable size and weight requirements, or any other portion of the regulations not specifically authorized pursuant to 49 CFR section 390.23.

The declaration remains in effect for the duration of the emergency (as defined in Title 49 CFR section 390.5) or until 11:59 p.m., March 1, 2014, whichever is less.

The full declaration may be viewed <http://www.fmcsa.dot.gov/documents/alerts/ESC-Regional-Declaration-Extension-2-5-2014.pdf>.

State-by-state emergency declarations may be viewed at http://www.fmcsa.dot.gov/about/alerts/emergency-declarations_2013.aspx. ▲

FMCSA Final Rule on Patterns of Safety Violations

The Federal Motor Carrier Safety Administration (FMCSA) has issued a final rule amending its regulations to enable the Agency to suspend or revoke the operating authority registration of for-hire motor carriers that show egregious disregard for safety compliance, permit persons who have shown egregious disregard for safety compliance to exercise controlling influence over their operations, or operate multiple entities under common control to conceal noncompliance with safety regulations. These amendments implement section 4113 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), as amended by section 32112 of the Moving Ahead for Progress in the 21st Century Act (MAP-21), and are designed to enhance the safety of commercial motor vehicle (CMV) operations on our nation's highways.

The rule is effective February 21, 2014, and may be reviewed on line at <http://www.gpo.gov/fdsys/pkg/FR-2014-01-22/pdf/2014-01174.pdf> ▲

FMCSA Issues Study Claiming CSA Effectiveness

On Wed., February 5, 2014, FMCSA issued a study touting the effectiveness of the CSA Safety Measurement System (SMS) and claiming it's an improvement over the prior system, Safestat. The study found that, on average, fleets with scores above SMS intervention thresholds have significantly higher crash rates than those below thresholds. ATA formally responded in a news release by pointing out that the study substantially lacked data on the large portion of the industry, particularly small carriers, and that while crash rate trends may be true for carrier "groups" (e.g., average crash rate for all carriers with a given percentile score), the SMS was unreliable for the purposes of judging the safety performance of individual carriers. ATA's press release is at <http://www.trucking.org/article.aspx?uid=adf3886b-4ef5-4164-b9c0-2e637afb4974>. Also, analysis of FMCSA's CSA effectiveness report offered by Rob Abbott, vice president of safety policy can be seen on this video at <http://www.youtube.com/watch?v=JUxpMmxPV3Q&feature=youtu.be>. ▲

SuperTech Competition

Registration deadline for the written exam has been extended to **February 19.**

For registration forms, go to www.motrucking.org and click on the events section to download the forms.



ATA Applauds Long-Overdue Proposal for Drug and Alcohol Clearinghouse

The American Trucking Associations (ATA) praised the Federal Motor Carrier Safety Administration for finally issuing a congressionally mandated proposal to create a national clearinghouse of drug and alcohol test results for commercial drivers. The database would capture both positive test results and refusals to test to help ensure that drivers who violate Federal drug and alcohol testing regulations are removed from the roadway.

"ATA has been a strong advocate for the creation of this process to help protect motorists since 1999," said ATA President and CEO Bill Graves. "It is unfortunate that it took so long for the Federal Motor Carrier Safety Administration to act on this common sense safety solution, but we are pleased the agency has finally taken the first step toward creation of this clearinghouse."

The clearinghouse will eventually help close a loophole that allows violators of the drug and alcohol regulations to escape the consequences of their actions. Currently, a hiring employer will only know of an applicant's past test results if the driver provides the employer with an honest and complete employment history for verification purposes.

"No carrier wants to put an unsafe driver behind the wheel," said ATA Chairman Phil Byrd, president of Bulldog Hiway Express, Charleston, S.C. "This clearinghouse will be another tool we in the trucking industry can use to insure that only the safest, most qualified drivers move America's freight."

ATA was a strong and early advocate for the current mandatory drug and alcohol testing regulations before they were first made effective in 1995. Since then, ATA urged Congress in 1999 to require a study of the feasibility of such a clearinghouse. FMCSA issued its report in 2004, but only after an industry-supported 2012 Congressional mandate for the agency to create such a database was this proposal finally issued. ▲

NEWS FROM AROUND THE STATES AND PROVINCES



MN IFTA Decals Falling Off

The Minnesota Department of Public Safety has announced that it's having problems with the 2014 decals it's issued to Minnesota carriers under the International Fuel Tax Agreement. Seems the stickers won't all stick. The department says the problems aren't serious enough to reissue all decals, but will give replacements free to carriers requesting them. Call the department at 651-205-4141 for replacements. At their board meetings last month, both IFTA and the International Registration Plan expressed much interest in electronic credentials. In lieu of stickers? You betcha! ▲

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IFTA Settles with NJ

Some months ago, we reported that New Jersey was in serious trouble with the IFTA because the state had failed for quite a number of years to do as many fuel use tax audits as IFTA requires of its members. There seemed a chance at that point that it would actually come to a vote whether IFTA would expel New Jersey. However that vote might have gone – and we believe it would have failed – the result would have been very damaging to the Agreement. Now, however, the state appears to have come to a negotiated settlement with IFTA, under which New Jersey will do the backlog of audits over the next five years, or face potential monetary penalties. IFTA is also reportedly looking at its various procedures to see if it can ensure that no future situation can get quite as far out of hand. ▲

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NY Court Rules Challenge to Fee Can Proceed

The New York Supreme Court, Albany County, a trial court, has held that a challenge by trucking interests to the fees imposed by New York for its certificate of registration for the weight-distance tax, and for the decals it requires, stated a legal cause of action that the court could hear. For each vehicle subject to the tax which will operate in New York, the state requires the payment of \$15 for a certificate and \$4 for a decal. The taxpayers here claimed that the fees violated the Commerce and Due Process Clauses of

the U.S. Constitution. The court noted that the Commerce Clause argument depended on the 1986 U.S. Supreme Court decision in *ATA v. Scheiner*, which invalidated two somewhat similar flat taxes imposed by Pennsylvania. Here, the plaintiffs' allegations were sufficient under that decision to go forward to trial. The court similarly upheld the validity of the plaintiffs' cause of action in demanding both an injunction against future fees and a refund for fees collected in the past. The court did rule for the state, however, on the Due Process Clause argument, finding there was nothing in the allegations to support a denial of due process. So the plaintiffs now get to try to prove at trial that their pleaded allegations are true. *Owner Operator Independent Drivers Assn., et al., v. New York State Dept. of Taxation & Finance, et al.*, docket no. 5551-13, decided January 28, 2014 ▲

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~ Upcoming Events ~

April 23-24 **Safety & Maintenance Conference /
Exhibition Hall / Awards Banquet
SuperTech Competition**
Hilton Branson
Convention Center

June 6-7 **Truck Driving Championships**
DoubleTree
Chesterfield, MO

Check out our web site for the latest information on these two events - www.motrucking.org.

- ✓ Registration Forms
- ✓ Intent of Entry for TDC
- ✓ Exhibition Hall Contract
- ✓ Sponsorship Forms
- ✓ Hotel Information

The agenda and registration form for the Safety & Maintenance Conference are scheduled to be mailed out soon.

MoTA Photo Album



*Check back . . .
you could be in
our next album!*

