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Surface Transportation: SAFETEA-LU

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Surface Transportation: SAFETEA-LU

SUMMARY

On August 10, 2005, President Bush signed the Safe, Accountable, Flexible, Efficient Transportation Equity Act - A Legacy for Users (SAFETEA-LU or SAFETEA). This act reauthorizes federal surface transportation programs through the end of FY2009. The reauthorization was long overdue, given that the previous long term authorization, the Transportation Equity Act for the 21st Century (TEA-21) expired on September 30, 2003. Surface transportation programs continued to operate during this period, however, as a result of 11 extension acts.

The reauthorization debate was primarily characterized by two interrelated issues, money and how that money would be distributed among the states. The 108th Congress came close to a bill with a surface transportation Conference Committee in place. In the end, however, conferees were unable to reach agreement either among themselves or with the Bush Administration as to how large the six-year reauthorization package would be in dollar terms (the Administration initially wanted the bill limited to \$256 billion). The Conference was also unable to agree on a solution to the long standing donor-donee state funding distribution question, with donor states insisting on a 95% return on fuel tax revenues and donee states insisting that increased funding for donor states not come at their expense.

In the 109th Congress, the same issues threatened to undermine a Conference Committee that began meeting in June 2005. This time, however, all parties found ways in which to compromise. Most importantly, the Administration allowed total funding in the bill to rise to \$286.4 billion for the six-year authorization period (in actuality the act provides \$244.1 billion for the five years remaining before FY2009). This increase allowed the conferees to ultimately guarantee all states an eventual 92% rate of return, an improvement on the existing 90.5% rate, while at the same time holding other states harmless. With these key compromises in place many of the objections to the bill disappeared and the conference report was agreed to on July 29, 2005.

In addition to money issues, The act addressed a number of other issues as part of the reauthorization debate. These included the creation of a new consolidated safety program, enhanced environmental streamlining regulations, changes in clean air conformity regulations, funding for transit new starts, expanded reliance on innovative financing and tolls, and spending on congressional high priority projects (earmarks).

This issue brief provides an overview of SAFETEA. Additional CRS products now in preparation will examine some of these subjects in greater detail at a later date.

MOST RECENT DEVELOPMENTS

On August 10, 2005 President Bush signed the Safe, Accountable, Flexible, Efficient Transportation Equity Act - A Legacy for Users (SAFETEA-LU or SAFETEA). Enactment completes the reauthorization process. All federal surface transportation programs are now authorized through FY2009.

BACKGROUND AND ANALYSIS

Federal surface transportation programs are a major component of national spending on transportation capital infrastructure. According to a Government Accountability Office (GAO) report 46% of all U.S. highway capital spending in FY2002 was attributable to federal funding. Likewise, it is the availability of federal transit funding that has provided the possibility of bus and rail transit projects in many communities during the last few decades.

Structurally, surface transportation legislation normally consists of multiple separate titles which can be viewed as the principal programs and their funding mechanism; highways, highway safety, transit, motor carrier safety, research, planning, hazardous materials transportation, rail, and finance. Additional titles are sometimes included in reauthorization legislation, that are often unrelated to transportation (as is the case of certain tax provisions in SAFETEA). It should be pointed out that the term program has multiple meanings in a discussion of federal surface transportation policy. The larger federal-aid highway program, for example, consists of a number of separate programs such as the surface transportation program (STP). Funds in the various programs are distributed on the basis of formulas (known as apportioned programs in highway parlance) and on a discretionary basis (also referred to as the allocated programs in the highway program).

The majority of funding in the overall surface transportation bill, and the vast majority of highway funding, goes to the so-called "core" highway programs. SAFETEA increases the number of these core programs from five to six: interstate maintenance (IM), national highway system (NHS); surface transportation program (STP); bridge and bridge maintenance; congestion, mitigation, and air quality (CMAQ); and the new highway safety improvement program (HSIP) are all apportioned programs. A seventh program, formerly the minimum guarantee but now the equity bonus (EB), is sometimes referred to as a core program. Most remaining highway funding goes to the allocated programs, such as federal lands highways, which are ostensibly under the control of the Federal Highway Administration (FHWA), but in recent practice have been largely earmarked during the annual appropriations process.

The structures of the highway safety, research, and transit programs also include a mix of formula and discretionary programs. In the transit program, for example, about half of all funding is distributed directly to transit operators by the urbanized area formula program and the non-urbanized area formula program. Each of the major programs also includes planning, environmental, and other elements that are major subjects of discussion during reauthorization debates.

Surface Transportation Finance

Federal funding for surface transportation is closely linked to the revenue stream provided by the highway trust fund. The trust fund is in fact two separate accounts - highways and mass transit. The primary revenue sources for these accounts are the 18.4 cent per gallon tax on gasoline and a 24.4 cent per gallon tax on diesel fuel. Although there are other sources of revenue for the trust fund, these fuel taxes provide about 90% of the income to the funds. Of these amounts, the transit account receives 2.86 cents per gallon and 0.1 cent per gallon is reserved for an unrelated leaking underground storage tank (LUST) fund. Over the almost 50 year life of the trust fund there have been several increases in the level of taxation. The last increase in the fuel tax occurred in 1993 (these funds were not actually deposited into the trust fund initially, but were deposited in the Treasury general funds for deficit reduction purposes until 1996).

For almost 50 years the trust fund has been a reliable source of funding for surface transportation. In FY2004, for example, the highway account received tax revenues of \$31 billion, while the mass transit account received \$5 billion. For most of its history the trust funds have collected more than has been expended relative to the size of the program defined by Congress. This situation has been changing in the last few years. The FY2004 limitation on obligations was set at \$33.6 billion and the FHWA total appropriation was \$34.5 billion, both amounts of which are higher than the revenues collected for the fiscal year. For a number of reasons, however, the trust fund's unexpended balance remains substantial, but is declining. Because of this trend there is some uncertainty at the moment about the long term outlook for the financial health of the trust fund. This is in spite of the fact that the American Jobs Creation Act of 2004 (P.L. 108-357), passed in the closing days of the 108th Congress, provided the trust fund with additional future income by changing elements of federal gasohol taxation. These changes could provide the trust fund with an additional \$4 billion per year starting in FY2005.

As mentioned earlier, both the House and Senate passed reauthorization legislation in the 2nd Session of the 108th Congress and a Conference Committee was formed. The Conference Committee, Congressional Leadership, especially in the House, and the Administration were unable to reach agreement about total program funding for the next reauthorization period. This was largely because some Members of Congress backed a level of project funding larger than the Bush Administration was willing to support. Part of the Administration's objection related to the above debate about the future health of the trust funds vis-a-vis the Administration's adamant objection to raising fuel taxes either now or in the future. Some Members of Congress, on the other hand, had identified a number of mechanisms, including the now adopted gasohol changes, other tax changes, and rescissions that they felt would support a larger program. The gasohol changes by themselves, however, would not have been sufficient to fund the program size desired by many Members.

Conferees on SAFETEA also considered a number of tax and other changes that would increase revenues to the trust fund and/or offset additional highway and transit spending. Several of these provisions are included in the finance title of the act. The revenue increases in this title are viewed as quite modest and derive mostly from cutting back on tax fraud and by transferring some Treasury general fund revenues associated with transportation related activities to the trust fund. It is believed that the changes identified in SAFETEA when combined with the changes in gasohol legislation enacted in 2004, when combined with

expected economic growth, will be sufficient to finance the \$286.4 billion program created by the act.

Major SAFETEA Features

Authorization Period

Federal highway, highway safety, and transit programs are subject to periodic reauthorization. Prior to passage of SAFETEA, the most recent authorization was the Transportation Equity Act for the 21st Century (TEA-21, P.L. 105-278), which provided funds for the period FY1998 - FY2003. After October 1, 2003 all federal surface transportation programs continued to operate on the basis of 11 short term extension acts.

Although there have been numerous short term reauthorizations in the history of these programs, there is a consensus in the surface transportation community that long-term reauthorizations, such as that afforded by TEA-21, better accommodates the long term planning needs and construction horizons associated with the provision of highway and transit infrastructure. Reauthorization by short-term extensions created a great deal of uncertainty about the likelihood of future funding in the highway and transit community. Highway and transit interests at the state and local level, and in the private sector, have, therefore, welcomed passage of SAFETEA even though delays in its passage have converted it from a six-year bill to a just over four-year bill expiring in FY2009.

Guaranteed Funding

Most of the debate about SAFETEA was about money and its distribution. At the end of the day, SAFETEA provides quite a bit of additional money, \$286.4 billion in guaranteed spending authority, for the six-year period FY2004 - FY2009. This is a significant increase over the level in TEA-21 which provided \$218 billion over the six-year period FY1998 - 2003. A direct comparison between the two bills, however, is difficult for a number of reasons that are beyond the scope of this issue brief. Suffice it to say that SAFETEA represents a significant funding increase for all federal surface transportation programs.

In reality, SAFETEA is a five-year bill, FY2004 is history and, at time of passage, only two months remained in FY2005. A more useful representation of SAFETEA, therefore, is that it provides just over \$244 billion in guaranteed spending authority between FY2005 - FY2009. As Table 1 shows, all major programs affected by the legislation receive significant new funding (the exempt obligation category is provided for equity bonus and emergency funding purposes and does not reflect a program per se). Total annual spending increases occur in each year and total spending in FY2009 is almost 23% higher than spending in FY2005.

The House version of what became SAFETEA contained a so-called “re-opener” provision that would have required that Congress reconsider the total amount of funding available at a specified later date. The Bush Administration strongly objected to this provision and it was not included in the final act.

Table 1: Guaranteed Obligations
(\$ billions)

	FY2005	FY2006	FY2007	FY2008	FY2009	Total 5-years
Highway Obligation Limitation	34.442	36.032	38.244	39.585	41.200	189.484
Exempt Highway Obligations	0.739	0.739	0.739	0.739	0.739	3.695
Highway Safety and Motor Carrier Safety Obligations	0.742	1.189	1.217	1.239	1.270	5.656
Mass Transit Obligations	7.646	8.623	8.975	9.731	10.338	45.313
Totals	43.550	46.583	49.174	51.294	53.547	244.148

Source: Transportation Weekly. August 4, 2005. P. 5.

Revenue Aligned Budget Authority (RABA)

TEA-21 created a spending mechanism intended to adjust annual highway program obligations to reflect changes in revenue in the highway trust fund. The expectation was that this would provide for increases in obligational authority, although the law did allow for reductions in funding if trust fund revenues decreased. In its first three years, RABA provided significant additional spending authority. In FY2003, however, the RABA computation called for a program reduction. Congress choose, through the appropriations process, not to reduce spending and instead increased it.

As a result of this experience there was a push to change the way RABA was calculated to make revenue swings less dramatic, especially in the negative direction. SAFETEA changes how RABA is calculated primarily by using a two year calculation rather than the single year called for in TEA-21. In addition, it puts off RABA calculations until FY2007 and reduces the likelihood of spending reductions by requiring that no reductions occur so long as the unexpended balance in the highway trust fund exceeds \$6 billion (which it is forecast to do throughout the authorization period).

Surface Transportation Program (STP): Safety set-aside elimination

SAFETEA makes a significant change in the STP program by eliminating the 10% set-aside for safety projects. Those activities previously funded by the set-aside are now eligible for funding as part of the new highway safety improvement program (HSIP). The provision also broadens eligibility requirements to allow spending on projects at high accident rate and/or high congestion intersections.

Innovative Finance/Tolling

SAFETEA continues and expands existing innovative finance programs such as TIFIA and state infrastructure banks (SIBs). The act lowers TIFIA's minimum project threshold from \$100 million to \$50 million and provides \$122 million for the programs leveraging activities. Under SAFETEA any state may enter into an agreement with DOT to establish an SIB (under TEA-21 only four states had been eligible).

The act also makes changes to tolling programs that should make utilization of tolling somewhat more likely. The act provides for three separate tolling programs. It continues the existing value pricing program and provides \$59 million over five years to fund it. One-third of this funding must be reserved for non-toll projects, however. The second, and new program, is the express lanes demonstration program. This program is limited to 15 locations and is aimed primarily at creating new interstate and/or other highway lanes. It is assumed that most of this funding would go for HOT (high occupancy toll) lanes. The provision adds new criteria for operation of a funded toll facility, such as requirements for variable pricing and automated toll collection. Finally, the act maintains the prohibition on tolling of existing interstate highway programs except to the extent that it allows a pilot program for the construction/reconstruction of three interstate facilities to be built using toll revenues.

The most important provision related to tolling is in the finance title of the bill. This provision provides up to \$15 billion in private activity bonding authority for new highway and freight transfer facilities. These facilities could be on or off of the defined federal-aid highway system. Although the provision does not require roads built using private activity bonds to be tolled, it is unlikely that this would be the case unless some other revenue mechanism related to facility use could be created. There are no specific estimates in the conference report or elsewhere as to how much infrastructure could be created using the leverage in this provision. If fully utilized, the effect could be substantial. By way of comparison, only California will receive more than \$15 billion in formula highway assistance from SAFETEA.

Earmarking

SAFETEA contains approximately 5,145 separate earmarks for congressional high priority projects (HPPs) with a value of over \$14.8 billion (there are several blank, but nonetheless numbered earmarks in the conference report). This compares with 1,849 similarly labeled earmarks in TEA-21 with a value of \$9.4 billion.

The HPPs are not the only earmarks in the act. Three new earmarked categories have been created. The first, projects of national and regional significance, provides almost \$1.8 billion for 25 projects. The individual earmarks in this category are mostly larger than those in the HPP program and, as the name of the program suggests, are of a larger scope. A second set of earmarks is provided for national corridor infrastructure improvement. This category lists 33 earmarks valued at over \$1.9 billion. The corridor infrastructure program is not new, but was not specifically earmarked in previous authorizing legislation. The final earmarked category is for transportation improvements. There are 465 projects listed with over \$2.5 billion in dedicated funding. This is a totally new program and there is no explanation in the conference report as to how, or if, the projects in this list are supposed to differ from those in the HPP program. In looking at these earmarked programs it should be

noted that individual projects may appear in more than one project list and that they can receive different amounts of funding in each case.

The other large earmark program in the act is in the transit title. 662 bus and bus facility projects receive almost \$1.6 billion in funding. There are also stand-alone earmarks scattered throughout the highway and transit titles of the act. By some estimates the total amount of earmarking in the bill exceeds \$24 billion, although an exact accounting is difficult at best for definitional reasons.

Equity Issues: The Donor-Donee Question

Historically, transportation policy battle lines have often formed along regional rather than partisan alignments. The regional character of transportation policy is evident in the debate over the equity of distribution of federal highway aid among the states. Since 1982 Congress has included legislative provisions in every surface transportation reauthorization act to remedy these perceived funding distribution concerns through a variety of minimum guarantee provisions. For many years, some states (mostly Southern as well as some Mid-Western and Western States) have complained that they receive significantly less federal highway aid than their highway users pay in federal highway taxes to the highway trust fund (HTF). These states, referred to as donor states, have pressed for legislative remedies that would assure them a higher share rate-of-return, most recently 95%, on their tax payments to the Treasury. Donee states, states that receive more federal highway aid than they pay in federal highway taxes, have not opposed equity provisions per se but have opposed any reduction in their existing shares.

The basic donor state argument is a relatively straightforward call for equity or fairness. Donor state advocates generally contend that for too many years they have been subsidizing the repair and improvement of donee state infrastructure, especially the older highway infrastructure in the Northeast. Most also argue that they are more road dependent and do not benefit from federal transit spending to the same degree as some donee states. Southern and western donor states also argue that they are fast growth areas, relative to most donee states, and that, consequently, their needs are as great or greater. Finally, they argue that with the completion of the Interstate Highway System there is no valid rationale for the donor-donee disparity. Donee state advocates argue that fairness should not be separated from needs. They assert that the age of their highway infrastructure, especially in the Northeast, the high cost of working on heavily congested urban roads, and the limited financial resources in large sparsely populated western states justify their donee status. They also argue that there are needs that are inherently federal rather than state and that a national highway network cannot be based solely on state or regional boundaries. Donee states also argue that mid-western and southern states spend less local and state money on highways than donee states, and chide them for pleading for federal funds when they are unwilling to ante up their own state and local resources.

In a broader sense, the debate over equity remedies has implications for a number of overarching issues. An equity guarantee of a 95% rate of return could, in the minds of some, leave little room for addressing other or additional transportation needs that are uniquely federal, such as the Federal Lands Highway program. Also, the role of the federal government vis-a-vis the states comes into question as the minimum guarantee approaches 100%. At what point does the federal role become so limited that converting the Federal aid

highway program to a revenue sharing or a block grant program make sense? Another controversial issue is whether the Minimum Guarantee (MG) should be broadened, as some states have proposed, to include Federal Transit Administration programs.

The 109th Congress faced a difficult policy problem in resolving the seemingly contradictory goals of meeting donor state demands for a higher rate-of-return and donee state demands to be held harmless at a time when the HTF revenue base was expected to be insufficient to easily fund both goals. Part of the problem was that a bill that simply reduced the shares of donee states to increase the shares of donor states would have had difficulty overcoming a filibuster by donee states in the Senate. To construct a minimum guarantee (MG) mechanism that could overcome this obstacle, previous reauthorization bills had included “hold harmless” provisions that maintained certain base shares for all states. This meant that part of the process of bringing donor state shares up to the MG percentage required increasing the overall federal highway program size, usually by a significant amount (since donee state funding could not be reduced). In other words, providing equity remedies that keep both donor and donee states reasonably content has been accomplished by giving more money to all states but giving even more to donor states to bring their shares up to a designated per cent share, currently 90.5%. Providing equity in this way has been very expensive in dollar terms, the minimum guarantee program under TEA21, in fact, became the largest highway program.

SAFETEA’s “Equity Bonus” Innovation. In the end, the constraints of limited funding availability and the practical politics of getting the surface transportation legislation through both houses of Congress, resulted in a modest and gradual increase in the guaranteed rate-of-return to the states. SAFETEA replaces the entire TEA-21 MG program with an “Equity Bonus” program (EB). Basically, the individual program formulas are to be run to determine the initial apportionments, and then the equity bonus funding is to be added to these levels to bring donor states up to their guaranteed rate-of-return levels. The act directs the Secretary of Transportation to allocate to the states for each of the fiscal years 2005 through 2009 sufficient funds to ensure that each state receives at least a return of 90.5% for FY2005-2006, 91.5% for FY2007, and 92% for FY2008-2009, on their estimated payments to the highway account of the HTF. The act keeps nearly all the programs subject to MG under TEA-21 (IM, NHS, STP, CMAQ, HBRR, Recreational Trails, Appalachian Development Highway System, High Priority Projects, and metropolitan planning) subject to the equity provision, as well as three new formula programs, the Coordinated Border Infrastructure Program, the Safe Routes to School Program, the Highway Safety Improvement Program, and the rail-highway grade crossing program.

The EB program also includes a number of hold harmless provisions that provide that certain states will receive the greater of the annual percent return described above or their share of total apportionments over the six year life of TEA-21. To be held harmless the state must meet one or more of the following criteria, the state must: have a population density of less than 40 people per square mile and at least 1.25% of their total acreage must be under federal jurisdiction; have a population under one million people; have a median household income under \$35,000; have a fatality rate on Interstate Highways in 2002 of greater than 1.0 per 100 million vehicle miles traveled; or have an indexed state motor fuel excise tax rate that is more than 150% of the federal motor fuel excise tax rate. There are twenty-seven states that qualify under these criteria: Alabama, Alaska, Arizona, Arkansas, Colorado, Delaware, District of Columbia, Florida, Idaho, Kentucky, Louisiana, Mississippi, Missouri,

Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Vermont, Utah, West Virginia, Wisconsin, and Wyoming.

The EB program also guarantees that no state may receive less than a set percentage of its average annual TEA-21 apportionments for each fiscal year. In effect, this sets an annual percentage floor, relative to a state's TEA-21 average apportionment, beneath which no state can fall. The annual percentage floors are as follows: 117% for FY2005, 118% for FY2006, 119% for FY2007, 120% for FY2008, and 121% for FY2009.

The programmatic distribution of Equity Bonus Program funds to the states is as follows. Each year the first \$2.639 billion is to be apportioned to states as STP funds, except that certain set-asides such as for Transportation Enhancements and some population-based sub-state allocations do not benefit from this distribution. Any Equity Bonus funds above \$2.639 billion are distributed to six programs: IM, HBRR, NHS, STP, CMAQ, and the Highway Safety improvement Program. The distribution among these programs is based on the ratio of each program's apportionment to the total apportionment of all six programs for each state. FHWA analysis indicates that over the five-year life of SAFETEA, the EB program distributions will amount to \$40.9 billion. **(CRS contacts: Robert Kirk and John Fischer)**

Traffic Safety and Research

As part of the debate over surface transportation legislation, Congress deliberated reauthorization of federal funding for various programs affecting traffic or highway safety. The safety objectives that were discussed included reducing road hazards and improving safety infrastructure, addressing highway-rail grade crossing concerns, promoting child transportation safety, increasing the resources of states and communities to implement innovative traffic safety programs, increasing safety belt use rates, and decreasing drug- and alcohol-impaired driving. Relevant programs are administered by various DOT agencies, including the FHWA, the National Highway Traffic Safety Administration (NHTSA), and Federal Motor Carrier Safety Administration (FMCSA). The debate considered the amount of funding, program purposes, and the structure of various safety grants provided to the states. Various interest groups and many Members of Congress sought additional funding to improve highway infrastructure and operations affecting safety, strengthen commercial driver licensing programs, and improve the federal/state partnership affecting truck and bus safety. Competition for funds was intense among various safety programs.

As enacted, SAFETEA includes many provisions that affect safety. For example, the law

- authorizes the Highway Safety Improvement Program (Section 148), which provides grants to the states to fund an array of infrastructure-, operational-, and planning-related safety projects or activities;
- establishes the Safe Routes to School Program which provides grants to the states intended to enable and encourage primary and middle school students to walk and bicycle to school;

- authorizes increased funding compared to FY2005 for the Section 402 (state and community traffic safety grants) program, the Section 410 (alcohol-impaired driving countermeasures grants) program, and the Section 405 (occupant protection incentive grants) program; and
- authorizes an incentive grant program (Section 406) to reward states that enact and enforce primary safety belt laws or achieve, after December 31, 2005, a state safety belt use rate of 85% or more for each of the two calendar years immediately proceeding the fiscal year of a grant. **(CRS contact: Paul Rothberg)**

Freight and Intermodal Provisions

SAFETEA contains a number of provisions that are intended to improve freight mobility by truck and rail modes. Section 9003 expands an existing federal loan and loan guarantee program for rehabilitating and improving rail track from \$3.5 billion to \$35 billion in total value of outstanding loans. Of the \$35 billion total, \$7 billion is reserved for smaller, short-line railroads. Section 9002 creates a new federal grants program for relocating rail track or grade separating rail track that is interfering with a community's motor vehicle traffic flow, its quality of life, or its economic development. The program authorizes \$350 million for each of fiscal years 2006 through 2009. SAFETEA also contains funding for a number of specific projects that are intended to improve freight mobility. Section 1301, "Projects of National and Regional Significance," funds several freight rail-related projects. Examples include \$100 million for Chicago area rail improvements, \$100 million for a rail tunnel under New York harbor, and \$90 million to improve a rail line connecting Virginia seaports with Ohio. Section 1302, the "National Corridor Infrastructure Improvement Program," funds improvements to highways heavily used by trucks, including \$100 million for constructing dedicated truck lanes on Interstate 81 in Virginia. SAFETEA also reauthorizes, with modifications, the "Coordinated Border Infrastructure Program" (section 1303) which is intended to improve freight mobility at U.S. land border crossings. The "Transportation Infrastructure Finance and Innovation Act" (TIFIA), a federal loan financing program, is reauthorized and the program's eligibility language is amended to make it more explicit that freight related projects, such as rail facilities, intermodal terminals, or access to seaports are eligible under the program (see section 1601). Section 1306 creates a new grant program entitled "Freight Intermodal Distribution Pilot Grant Program" that provides \$6 million in grants for each of fiscal years 2005 through 2009 for improving freight mobility around U.S. international ports, inland ports, and intermodal freight facilities. The pilot program designates a total of six projects located in Oregon, Georgia, California, Alaska, and North Carolina to carry out the program. Finally, SAFETEA does not contain a provision in the House passed version of H.R. 3 that would have mandated a truck fuel surcharge for truckload carriers. **(CRS Contact: John Frittelli)**

Conformity of Transportation Plans and State Implementation Plans (SIPs)

Under the Clean Air Act, areas that have not attained one or more of the six National Ambient Air Quality Standards must develop State Implementation Plans (SIPs) demonstrating how they will reach attainment. As of May 2005, at least 126 areas with a

combined population of 159 million people were subject to the SIP requirements. Section 176 of the Clean Air Act prohibits federal agencies from funding projects in these areas unless they “conform” to the SIPs. An area’s Transportation Improvement Program (TIP), which identifies major highway and transit projects an area will undertake, must demonstrate conformity each time it is revised (i.e., at least every two years). To do so, it must show that the projects to be undertaken will not lead to an increase in emissions that would delay attainment of air quality standards. Highway and transit projects cannot receive federal funds unless they can make this demonstration.

Transportation planners and highway builders in a number of areas have expressed concern that conformity requirements could lead to the temporary suspension of funding for major projects, as happened in the late 1990s in Atlanta. Many have argued that the conformity requirements need to be made more flexible. As currently written, for example, the Clean Air Act provides no authority for waivers of conformity, and only a limited set of exempt projects (mostly safety-related or replacement and repair of existing transit facilities) can be funded in areas where conformity has lapsed. In addition, many have raised concerns about a mismatch between the SIP, TIP, and long range transportation planning cycles, and have called for less frequent, but better coordinated demonstrations of conformity.

As enacted, SAFETEA requires less frequent conformity demonstrations (at least every four years instead of every two years), and will shorten the planning horizon over which conformity must be demonstrated to 10 years in many cases, instead of the former requirement of 20 years. The local air pollution control agency will need to be consulted and public comments solicited if the planning horizon is to be shortened. The bill also establishes a 12-month grace period following a failure to demonstrate conformity before a lapse would be declared. **(CRS contact: Jim McCarthy)**

Environmental Issues

During the reauthorization process, environmental issues garnered significant attention from both Members of Congress and interested stakeholders (e.g., state transportation agencies, transportation construction organizations, and environmental groups). This attention was due both to the impact that surface transportation projects can have on the environment and the impact that compliance with environmental requirements can have on project delivery. As a result of this concern, SAFETEA includes a variety of environmental provisions. Generally, those provisions do one of the following: *authorize funding* to eliminate, control, mitigate, or minimize environmental impacts associated with surface transportation programs or projects; or *specify procedures* required to be undertaken to expedite compliance with certain environmental requirements. With regard to the latter, SAFETEA includes provisions that change the procedures DOT will be required to follow to comply with the Clean Air Act’s conformity requirements and the National Environmental Policy Act’s (NEPA) environmental review requirements.

Another significant environmental-related provision in SAFETEA regards “Section 4(f)”¹ requirements applicable to publicly owned parks, recreation areas, wildlife and

¹ Section 4(f) of the Department of Transportation Act of 1966 was originally set forth at 49 U.S.C. (continued...)

waterfowl refuges, and public or privately owned historic sites of national, state, or local significance. Under current law, use of a Section 4(f) resource for a transportation project is prohibited unless there is no prudent and feasible alternative to do otherwise. SAFETEA amends the current law to allow for the use of a Section 4(f) resource if it is determined that such use would result in “de minimis impacts” to that resource. For historic sites, it must be determined that use of the resources will have no “adverse effect” on the site in accordance with provisions of Section 106 of the National Historic Preservation Act (16 U.S.C. 470f). Also, SAFETEA specifically exempts the Interstate System, segments of which are approaching 50 years old, from consideration as a historic site pursuant to Section 4(f).

Two controversial environmental provisions were *not* included in the final bill. The first was a provision in the Senate-passed version of H.R. 3 that would have required a two percent set-aside of each state’s STP apportionment for a Highway Stormwater Discharge Mitigation Program. The second is an exemption for aviation refueling trucks from secondary containment requirements of the Clean Water Act’s Oil Spill Prevention, Control, and Countermeasures (SPCC) Program (during the Senate debate of H.R. 3 and during conference, it was widely speculated among some interested stakeholders that such a provision would be included in the final bill). **(CRS contact: Linda Luther)**

Transit

The act provides \$45.3 billion in guaranteed funding for transit for the five-year authorization period FY2005-FY2009. Including FY2004 funding, the six-year total is \$52.6, a 46% increase over the \$36 billion guaranteed in TEA-21.

The basic structure of the transit program was unchanged, but SAFETEA adds several new programs and makes some changes to existing programs. New programs include a Growing States and High-Density States Program, a New Freedom Program, and an Alternative Transportation in Parks and Public Lands Program. The Growing States and High-Density States Program provides additional funding to the Urbanized Area and Non-Urbanized Area Formula Programs. Half of the funds are apportioned to states according to population forecasts for 15 years beyond the date of the most recent Census, and are distributed to both urban and rural areas within each recipient state according to the ratio between urban and rural population within each state. The other half of the funding under this program is distributed to urbanized areas in states with population densities over 370 persons per square mile.

The New Freedom Program is a formula program to increase the availability of transportation services to persons with disabilities, “including transportation to and from jobs and employment support services.” The Alternative Transportation in Parks and Public Lands Program is a grant program to provide transportation alternatives to the private

¹ (...continued)

§ 1653(f) and applies to all DOT projects. A similar provision, found at 23 U.S.C. § 138, applies specifically to federal-aid highways. In 1983, as part of a general recodification of the DOT Act, 49 U.S.C. § 1653(f) was formally repealed and codified in 49 U.S.C. § 303 with slightly different language. This provision no longer falls under a “Section 4(f),” but DOT has continued this reference, given that over the years, the whole body of provisions, policies, and case law has been collectively referenced as Section 4(f).

automobile in national parks and public lands, in order to protect those areas and to provide access to those areas for everyone, including persons with disabilities. The Alternative Transportation in Parks and Public Lands Program will be exempt from the labor protection provisions of 49 U.S.C. 5333(b) that apply to other transit programs.

Changes to existing programs include the addition of new categories under the Urbanized Areas Formula Program, the Non-Urbanized Areas Formula Program, and the New Starts program, and the conversion of the Job Access and Reverse Commute Program from a discretionary to a formula program. Under the Urbanized Areas Formula Program, the new category added is for small (under 200,000 in population) transit-intensive urbanized areas (areas that provide a level of transit service comparable to that provided by areas between 200,000 and one million in population); these small transit-intensive areas will receive funding from a set-aside in the formula program. Under the Non-Urbanized Areas Formula Program, a new category is created for states with low population densities; 20% of the program's funding is set aside for this group of states. Also, Indian tribes will become eligible recipients of funding under this program, and a portion of the funding is set aside for that group. Under the New Starts Program, a Small Starts category is added, and the exemption for projects under \$25 million is eliminated. New Starts projects seeking less than \$75 million in federal funding (Small Starts) will be subject to a streamlined evaluation process. Those projects seeking more than \$75 million in federal funding will continue to be subject to the full New Starts evaluation process. The federal share for New Starts projects (80%) was not changed. **(CRS contact: Randy Peterman)**

Recreational Trails Program (RTP)

SAFETEA continues the Recreational Trails Program, initially authorized under ISTEA and expanded under TEA-21, as a state-administered, federal-aid grant program to help states develop and maintain recreational trails for motorized and non-motorized trail uses. SAFETEA funds the RTP at \$370 million over five years (\$60 million for FYF2005, \$70 million for FY2006, \$75 million for FY2007, \$80 million for FY2008, and \$85 million for FY2009). The measure also sets a level of \$840,000 annually for administrative expenses.

SAFETEA amends the program to include permitting the federal share for recreational trails projects to be determined in accordance with 23 U.S.C. §120(b); allowing recreational trails funds to be used toward the federal share of certain other federal programs; permitting pre-approval planning and environmental compliance costs be credited toward the non-federal share of a project; operating educational programs to promote safety and environmental protection as those objectives relate to the use of recreational trails; and encouraging states to enter into contracts and agreements with youth service corps for construction and maintenance of trails. **(CRS Contact: Sandra L. Johnson)**