Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users (SAFETEA-LU or SAFETEA): Selected Major Provisions

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Summary

On August 10, 2005, President Bush signed the Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users (SAFETEA-LU or SAFETEA) (P.L. 109-59). 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) (P.L. 105-206) expired on September 30, 2003.

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 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 27 states harmless (meaning they will not receive less actual money than they have in the past). 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. 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 report will be updated as warranted by congressional actions.

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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 legislative 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, called the equity bonus (EB) (which replaced the TEA-21 minimum guarantee program), is sometimes also 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.

Major SAFETEA Provisions

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 accommodate 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 a four-year bill expiring in FY2009.

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 (all of these funds were not actually deposited into the trust fund initially, but were deposited in the Treasury general funds for deficit reduction purposes until FY1998).

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 had 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-à-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 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 was believed at time of passage, that the changes identified in SAFETEA when combined with the changes in gasohol legislation enacted in 2004, and enhanced by expected economic growth, would be sufficient to finance the $286.4 billion program created by the act.[1] **(CRS contacts: John Fischer and Robert Kirk)**

Trust Fund Budgetary Treatment

TEA-21 changed the way the highway trust fund relates to the Federal Unified Budget in two ways: first by creating new budget categories and second by setting statutory limitations on obligations. The act amended the Balanced Budget and Emergency Deficit Control Act of 1985 to create two new budget categories: highway and mass transit. The act further amended the budget process by setting the limitation on obligations for each fiscal year from FY1999 to FY2003 in authorizing rather then appropriations legislation. In addition, TEA-21 provided a mechanism, Revenue Aligned Budget Authority (RABA), to adjust these amounts in the highway account, but not the transit account, so as to correspond with increased or decreased receipts in highway generated revenues. The provision also adjusts the highway program authorization level to correspond with this change. It should be pointed out, all of the above notwithstanding, that annual revenues and expenditures affecting the balances in the trust fund accounts remain part of the overall annual federal deficit calculation.

The net effect of the changes was to set a predetermined level of funding for core highway and transit programs, referred to in TEA-21 as a discretionary spending guarantee. These categories are separated from the rest of the discretionary budget in a way that prevents the use of funds assigned to these categories for any other purpose. These so called “firewalls” were viewed, in the TEA-21 context, as guaranteed and/or minimum levels of funding for highway and transit programs. Additional funds above the firewall level could be made available for highway and transit programs through the annual appropriations process, but for the most part this did not occur except in FY2003. SAFETEA has retained this budget format largely unchanged.

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 this report. Suffice it to say that SAFETEA represents a significant funding increase for all federal surface transportation programs, though not as much of an increase as many of the legislation’s original authors had hoped for.

[1] Recent events such as Hurricanes Katrina and Rita, the high price of oil, and what some believe may be a period of economic uncertainty are already raising questions about these forecasts. It is now expected by some that new estimates by the Department of the Treasury and others will show a trust fund revenue stream unable to fund all of the programs in SAFETEA prior to FY2009.

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 see). Total annual spending increases occur in each year and total spending in FY2009 is almost 23% higher than spending in FY2005. A summary of funding for major programs and activities can be found at the end of this report in **Appendix**. Even more detailed programmatic information, to the subprogram level, can be found at http://www.fhwa.dot.gov/safetealu/fundtables.htm

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. SAFETEA Guaranteed Obligations, FY2005-FY2009

($ billions)

	FY2005	FY2006	FY2007	FY2008	FY2009	Total 5-years
Highway Obligation Limitation	34.422	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	**43.549**	**46.583**	**49.175**	**51.294**	**53.547**	**244.148**

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

Changes to Revenue Aligned Budget Authority (RABA)

As mentioned earlier, 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.

Donor-Donee State Remedies

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 so-called "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 midwestern 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 Midwestern 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 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-à-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 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, 90.5% during TEA21. 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. 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's "Equity Bonus" Innovation

SAFETEA replaces the entire TEA-21 MG program with an "Equity Bonus" program (EB). Basically, the individual program formulas will determine the initial apportionments and then the equity bonus funding will 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 existing 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 less than one million people; have a median household income less than $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 apportioned to the STP, 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 the six core

programs: IM, HBRR, NHS, STP, CMAQ, and the HSIP. 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 cost $40.9 billion. **(CRS contacts: Robert Kirk and John Fischer)**

Highway Program and Formula Changes

Apportioned Programs

Funds for all of the programs discussed here are apportioned to the states on an annual basis using formulas found in SAFETEA. As a result they are sometimes referred to as the "apportioned" programs. In some instances, apportioned programs are also referred to as formula programs.

Under TEA-21 most highway funding was reserved for five major apportioned programs, which are usually referred to as the core programs. They, along with the minimum guarantee, accounted for the vast majority of highway spending: 86% of the FY2003 authorized amount. SAFETEA increases the number of these core programs from five to six: interstate maintenance (IM), national highway system (NHS); surface transportation program (STP); highway bridge and bridge maintenance (HBRR); congestion, mitigation, and air quality (CMAQ); and the new highway safety improvement program (HSIP). A seventh program, the equity bonus (EB)(which replaced the TEA-21 minimum guarantee program), is sometimes referred to as a core 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. In addition to the core programs there are a couple of additional and much smaller apportioned programs that existed in TEA-21, and are continued in SAFETEA, e.g.: metropolitan planning and the recreational trails program.

Although many potential new programs were considered during reauthorization only a very few were finally included in SAFETEA. In addition to the HSIP, creates two new formula programs: the Coordinated Border Infrastructure Program (CBI), which replaces the TEA-21 discretionary program of the same name; and the Safe Routes to School Program (SRSP).

Apportioned Program Formula Changes

Under TEA-21, most of the funds distributed under the Federal-Aid Highway program were apportioned to the states based on apportionment formula factors set forth for the individual programs under Title 23 of the U.S. Code.[2] Some of these programs' formulas include a combination of weighted factors such as lane miles, vehicle miles traveled, and estimated tax payments to the highway account of the HTF. Others are primarily based on a single factor such as the relative state share of total cost to repair or replace deficient bridges (HBRR) or weighted non-attainment and maintenance area population under the Clean Air Act (CMAQ).

Although SAFETEA did not make major changes in the existing program formulas, the act did make some adjustments that are of note. The act eliminates the 10% safety STP set-aside that

[2] The MG program and the proposed Equity Bonus program also apportion funds by formula. For a discussion of these programs see the "Donor-Donee Remedies" section.

existed under TEA-21. The act continues the STP Transportation Enhancements set-aside but sets it as the greater of 10% of the funds apportioned to a state or the amount set-aside for FY2005. Adjustments were also made to the underlying calculation under CMAQ of weighted non-attainment and maintenance areas for ozone under the new 8-hour area standards. SAFETEA also creates a $20 million NHS set-aside for the construction of ferry boats and ferry terminal facilities in Alaska, New Jersey, and Washington. National Highway System set-aside for the Territorial Highway Program is set at $40 million for FY2005-FY2006 and at $50 million annually for FY2007-FY2009. The off-system bridge program set-aside minimum is maintained at 15% but the 35% ceiling is removed.

New Apportioned Program Formulas

Highway Safety Improvement Program (HSIP)

The formula distribution is weighted 33 1/3%, in the ratio of total federal lane miles in each state to the total lane miles of the federal-aid highways (FAHP) in all states; 33 1/3%, in the ratio of total FAHP vehicle miles traveled (VMT) in the state to total VMT on all FAHP highways; 33 1/3%, in the ratio of the annual number of fatalities on the federal-aid system in each state to the number of annual fatalities on the federal-aid system in all states. The minimum payment to each state is set at 0.5%. The Railway-Highway Crossings program is funded through a takedown from HSIP but is distributed differently to the states. Crossings funding is distributed 50% based on the same formula distribution formula that existed when crossings were part of the STP and 50% based on the ratio that the number of public railway-highway grade crossings in each state bears to the total number of public railway-highway grade crossings in all states. The act also requires that from the amounts made available for HSIP, beginning in FY2006, $90 million annually be set aside by the states, according to the share of each state to the total amount apportioned, to be used only for construction and operational improvements on high risk rural roads.

Coordinated Border Infrastructure Program

Under TEA-21, this was an allocated (discretionary) program. Under SAFETEA, the funds are to be apportioned to states along the Canada-U.S. and the Mexico-U.S. borders under the following formula: 20% in the ratio of incoming commercial truck crossings in a state to the total incoming commercial truck crossings in all border states; 30% in the ratio that incoming personal vehicle and bus crossings into a state to the total of incoming personal vehicle and bus crossings in all border states; 25% in the ratio of total weight of incoming cargo in a state to the total weight of incoming cargo in all border states; and 25% of the ratio that the total number of ports-of-entry in a state bears to the total number of ports-of-entry of all border states.

Safe Routes to School

Funds are to be apportioned among the states in the ratio that the total student enrollment in primary and middle schools in each state bears to the total student enrollment in primary and middle schools in all the states. No state is to receive an apportionment of less than $1 million. **(CRS contact: Bob Kirk and John Fischer)**

Allocated (Discretionary) Programs

All non-apportioned highway programs are subject to allocations that are based on criteria established in highway authorization and appropriation law. They also may be, and usually are, subject to congressional earmarking. In TEA-21 all of the programs in this category were smaller than the core programs, although there were some programs with significant funding levels. The same remains true in SAFETEA. The largest allocated program in SAFETEA is for congressionally mandated high priority projects (earmarks) that are specifically designated in the act. Other relatively large programs in the allocated category are the federal lands program, the interstate maintenance discretionary program, the bridge discretionary program (for FY2005 only), and the transportation and community and system pilot preservation program (TCSP).

New Allocated Programs

SAFETEA contains a few new large allocated programs. Among these are a new transportation improvement program, a redefined national corridor infrastructure program (formerly part of the national corridor planning and development and coordinated border infrastructure program), and a new program for projects of national or regional significance. All of these programs are subject to 100% earmarking in the act. The text of the act, however, contains a project selection criteria for the projects of national and regional significance and creates an operating framework for these projects that is somewhat different from the other allocated programs.

Innovative Finance and Tolling

Innovative Finance Provisions

Created by highway legislation primarily in the 1990s, innovative financing mechanisms attempt to use the guarantee of future highway funds as a way to speed project completion and to leverage additional funds for highway projects. There are three mechanisms currently in use: grant anticipation revenue vehicles (GARVEEs); credit assistance available as a result of the Transportation Infrastructure Finance and Innovation Act (TIFIA); and state infrastructure banks (SIBs). Each of these mechanisms has specific strengths and weaknesses that have been studied and described by GAO, CBO, and FHWA.[3]

SAFETEA makes changes in two of the federal innovative finance programs: TIFIA and the SIB program. Most of the changes may be viewed as perfecting changes in the programs but other changes are more significant.

[3] U.S. GAO. *Transportation Infrastructure: Alternative Financing Mechanisms for Surface Transportation.* Testimony before the Committee on Finance and Committee on Environment and Public Works. September 25, 2002. Available online from the GAO website at http://www.gao.gov/new.items/d021126t.pdf. See also the FHWA website at http://www.fhwa.dot.gov/innovativefinance/ and U.S. CBO, Innovative Financing of Highways: An Analysis of Proposals, January 1998 online at the CBO website at ftp://ftp.cbo.gov/3xx/doc320/finhways.pdf.

TIFIA

This program provides three types of federal financial assistance for major transportation projects: secured loans, loan guarantees, and standby lines of credit. SAFETEA both reduces the minimum project size threshold from $100 million to $50 million and also lowers the minimum project threshold for intelligent transportation system projects from $30 million to $15 million. The act provides $122 million annually to support TIFIA's leveraging activities.

SIBs

Under the SIB program, federal funds are used to help capitalize state infrastructure revolving funds. Under TEA-21, the program was limited to four states, Missouri, Rhode Island, California, and Florida. SAFETEA allows any state to enter into an agreement with DOT to establish SIBs eligible to be capitalized with federal funds drawn from core highway program funds.

Toll Provisions

SAFETEA consolidates most of the tolling provisions in Section 1604. The act authorizes four tolling programs as well as an additional provision concerning the tolling of HOV lanes. Section 1143 of the revenue title of the act, which concerns private facility bonds and is discussed under bonding, is also expected to have an impact on tolling.

Value Pricing Pilot Program

The program is continued under current law at the level of 15 tolling projects. The act authorizes $11 million for FY2005 and $12 million annually for FY2006-FY2009 with the stipulation that for each of the years FY2006-FY2009 $3 million is to be made available for non-tolling congestion pricing pilot projects.

Interstate System Reconstruction and Rehabilitation Pilot Program

This program was continued under current law. Both House and Senate bill provisions that would have changed the program were dropped during Conference.

Express Lanes Demonstration Program

This new program directs the Secretary of Transportation to carry out 15 demonstration projects to permit states, public authorities, or public or private entities designated by the states to collect a toll at an existing toll facility, or any highway, bridge, or tunnel (including facilities on the Interstate System) to 1) manage high levels of congestion; 2) reduce emissions in a non-attainment area or maintenance area; or 3) to finance the expansion of a highway for the purpose of reducing traffic congestion by adding lanes on the Interstate System. It is assumed that most of the funding will go for HOT (high occupancy toll) lanes. The use of revenues is restricted to use for debt service, a reasonable return on any private financing, and toll facility operating and maintenance costs. If the toll facility is annually certified as adequately operated and maintained, excess revenues may be used for any other purpose relating to federal-aid highway or transit projects.

Facilities that charge tolls under this program may set tolls that vary in price according to time of day or level of congestion, as appropriate to improve air quality or to manage congestion. High occupancy vehicle (HOV) facilities that charge tolls under this section are required to vary in price according to time of day or level of traffic. Fees collected on these express lanes are to be collected only through the use of noncash electronic technology.

Interstate System Construction Toll Pilot Program

The act establishes a pilot toll program which allows the Secretary of the Department of Transportation to permit a state or compact of states to collect tolls on an Interstate System highway, bridge, or tunnel for the purpose of constructing Interstate System highways. The pilot program would permit the collection of fees on only three facilities on the Interstate System. An interested state or compact of states must demonstrate that financing the construction of the facility with the collection of tolls under the program is the most efficient and economical way to advance the project. States will not be allowed to enter into an agreement with a private person under which the state is prevented from improving or expanding the capacity of public roads adjacent to the toll facility to address conditions resulting from traffic diverted to such roads from the toll facility, including excessive congestion, pavement wear, and increased traffic accidents, injuries, or fatalities. Revenues may be used only for debt service, a reasonable rate of return for private investors, and operating and maintenance costs, including resurfacing, restoring, and rehabilitating the toll facility. Interstate Maintenance program funds may not be used on a facility for which tolls are being collected under the program.

Other HOV Tolling Provisions (including hybrids)

Section 1121 of the act allows state departments of transportation to allow vehicles, not otherwise eligible for HOV use, to pay a toll charged by the agency to use the HOV lanes (including HOV lanes on the Interstate System). The provision requires the state agency to 1) establish a program to address how motorists can enroll and participate in the toll program; 2) develop, manage, and maintain a system that will automatically collect the toll; 3) establish policies and procedures to manage demand (i.e. traffic levels) by varying the toll amount charged; and 4) establish policies and procedures to enforce violations of use of the facility. Section 1121 also allows for the tolling of "low emission and energy-efficient vehicles" at a preferential rate for HOV use.

Private Activity Bonds

The act amends Section 142 (a) of the Internal Revenue Code of 1986 to allow the issuing of tax-exempt private activity bonds to finance highway projects and rail-truck transfer facilities. This allows state and local governments to issue tax exempt bonds to finance the activities of "private persons" (meaning the federal government or other individual entities other than state or local governments) to construct such facilities.

The act qualifies three categories of projects for tax-exempt facility bonding: any highway project that receives assistance under any Title 23 (highways); any international tunnel or bridge that likewise receives federal assistance under Title 23; and any truck-train transfer facility project which receives federal assistance under either Title 23 or Title 49 (mass transit). A $15 billion limit is placed on the aggregate face amount of the bonds that can be issued. The conference report does not estimate how much infrastructure could be created using the leverage of this provision. If utilized up to the limit, the impact of this provision could be substantial. By way of

comparison, only California will receive more than $15 billion in formula highway assistance from SAFETEA.

This bonding provision may be the most important tolling provision in SAFETEA. Although the act does not require that projects using private activity bonds be supported by tolls, it is unlikely that this would not be the case unless some other revenue mechanism related to facility use could be created. **(CRS contacts: John Fischer and Bob Kirk)**

Other Highway Provisions

Appalachian Development Highway Program (ADHP)

The ADHP is a road building program intended to break Appalachia's regional isolation and encourage Appalachian economic development. It is not considered part of the federal-aid highway program per se, but receives its funding from the highway trust fund. The program is administered under the auspices of the Appalachian Regional Commission. Funds are apportioned by the Department of Transportation to the member states based on their "cost to complete" estimates of the approved Appalachian Development Highway System (ADHS). In terms of road miles, 85% of the ADHS roads are either completed or under construction (as of the end of 2004). The ADHS 2002 Cost to Complete Report estimated the additional federal funds needed (from FY2004 onward) to complete the system at $4.47 billion. Under TEA-21 the ADHP received $450 million in contract authority annually. The program also received significant additional funding through the appropriations process during the TEA-21 years. ADHP funds are available until expended and provide an 80% federal share. SAFETEA provides $470 million annually for the ADHP. The act prohibits the use of toll revenues as credits for non-federal matching funds on ADHP-funded projects.

Earmarking[4]

The level of earmarking in SAFETEA is exponentially larger in terms of both numbers of projects and dollar terms then was the case in TEA-21. For starters, SAFETEA contains at least 5,092 separate earmarks for congressional high priority projects (HPPs) with a value of over $14.8 billion (there are several additional 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 highway title of the act (Title I). 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 then those in the HPP program and, as the name of the program suggests, are larger in scope. A second set of earmarks is provided for national corridor infrastructure improvements. This category lists 33 earmarks valued at over $1.9 billion. The corridor infrastructure program is not new, but was not 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

[4] Information on earmarks is from *Transportation Weekly*. Overview of Earmarked Projects in the Conference Report. August 4, 2005. p. 19.

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 HPPs program. It should be noted that individual projects may appear in more then one earmarking list and that they may receive different amounts of funding in each instance.

The above does not represent the full extent of earmarking in the act. There are also 32 individually listed earmarks throughout the highway title of the bill (Title I). These have a total value of almost $774 million. At least 25 earmarks can also be found in the research title of the bill (Title V) requiring an additional $241.6 million in funding.

The other largely earmarked program in the act is in the transit title. The bus and bus facilities program contains 662 specific projects with almost $1.6 billion in funding. There are at least 39 additional stand-alone earmarks in the text of the rest of the transit title valued at just over $191 million.

Above-the-Line/Below-the-Line

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. Much of the discussion about earmarks since passage of the bill has been focused on how earmarking effects the Equity Bonus calculation. By congressional parlance there are two types of earmarks in the bill for EB purposes, those "below the line," meaning they are part of the annual EB process and those above the line projects, meaning they are not. This computation significantly affects state shares because some states have received considerably more earmarked funds on a proportional basis than others.

Of the highway title (Title I) earmarks the HPPs are below the line. The other three earmarked programs are above the line and miscellaneous earmarks in the highway title are above the line. Transit earmarks are not part of the EB calculation.

Transportation Enhancements (TE) Program

Transportation Enhancements (TE) program activities (Sec. 1122) are nearly identical to those under TEA-21. The TE program funds 12 major categories of projects:

1. pedestrian and bicycle facilities;
2. pedestrian and bicycle safety and education activities;
3. acquisition of scenic and historic easements and sites (including historic battlefields);
4. scenic or historic programs including tourist and welcome centers;
5. landscaping and other scenic beautification;
6. historic preservation;
7. rehabilitation and operation of historic transportation building, structures, or facilities;
8. preservation of abandoned railway corridors (including conversion and use of the corridors for or bicycle trails);
9. inventory, control, and removal of outdoor advertising;

10. archeological planning and research;
11. environmental mitigation of runoff pollution and provision of wildlife connectivity;
12. establishment of transportation museums.

The funding mechanism for TE program activities has been modified. Under TEA-21, 10% of funds apportioned to a state were required to be available only for TE activities. Under SAFETEA (Sec. 133(d)(2)), funding for the TE program is the greater of 10% of the funds apportioned to a state under the Surface Transportation Program (STP) for a fiscal year, or the amount that was apportioned to a state in FY2005. Because STP funding is set to rise under P.L. 109-59, the 10% set-aside for TE activities ensures that additional funding will become available for enhancement projects.

Transportation and Community and System Preservation (TCSP) Program

The TCSP program, established under TEA-21 and reauthorized under SAFETEA, is designed to assist in planning, developing, and implementing strategies to integrate transportation, community, and system preservation plans and practices, and identify private sector-based initiatives to improve such relationships. TCSP funding was authorized for projects that aimed to improve the efficiency of the transportation system; reduce environmental impacts of transportation; reduce the need for costly future public infrastructure investments; ensure efficient access to jobs, services, and centers of trade; and examine development patterns and identify strategies to encourage compatible private sector development patterns. State, tribal, regional, and local governments would be eligible to receive TCSP grants.

Sec. 1117 of P.L. 109-59 provides a six-year total funding authorization of $270 million for the TCSP program, with $25 million authorized for FY2005 and $61.25 million authorized for FY2006-FY2009. This is substantially more than was authorized under TEA-21 ($120 million), but significantly less than the $454 million appropriated during the life of TEA-21 (additional funds were added above the TEA-21 authorized level during the annual appropriations process in some years).

Under TEA-21, TCSP spending was authorized at $20 million for FY1999 and $25 million per year for FY2000 through FY2003. As envisioned in TEA-21, competitive grants were awarded in FY1999. For FY2000 to FY2003, TCSP projects were earmarked in the annual transportation appropriations bills. TCSP funding amounted to $13.5 million in FY1999, $31.1 million in FY2000, $46.9 million in FY2001, $273 million in FY2002, and $89.5 million in FY2003.

Pedestrian and Bicycle Mobility

SAFETEA continues to provide a significant level of funding for bicycle and pedestrian programs that encourage a greater number of non-motorized trips, and pedestrian and cyclist safety, health, and education programs.

The major federal program that has supported pedestrian and bicycle mobility since the passage of ISTEA is the Transportation Enhancements (TE) program (23 USC §133(b)(8)), which is unchanged with respect to provisions for bicyclists and pedestrians. That program permits states

to allocate TE funds for (1) provision of facilities for pedestrians and bicycles, (2) provision of safety and educational activities for pedestrians and bicyclists, and (3) preservation of abandoned railway corridors (including the conversion and use thereof for pedestrian or bicycle trails).[5] Between FY1992 and FY2004, 55% of TE funds were programmed for these three activities. Provision of pedestrian and bicycle facilities accounted for 46.3% of programmed TE activities through FY2004.[6] A number of other programs within Titles 23 and 49 USC also provide for the construction of bicycle and pedestrian facilities associated with road and transit projects.

Safe Routes to School Program (Sec. 1404)

The Safe Routes to School Program is a new program under SAFETEA. It requires the Secretary of Transportation to establish and carry out a program to enable and encourage children, including those with disabilities, to walk and bicycle to school; to make bicycling and walking a safer and more appealing transportation alternative, thereby encouraging a healthy and active lifestyle from an early age; and to facilitate the planning, development, and implementation of projects and activities.

The Safe Routes to School Program will be funded at $612 million for FY2004-FY2009. Funding is to be apportioned among the states based on the ratio of total student enrollment in primary and middle schools in each state relative to the total student enrollment in primary and middle schools in all the states. Each state would receive a minimum apportionment of no less than $1 million per fiscal year and the Secretary is directed to set aside not more than $3 million for the administrative expenses of the Secretary in carrying out the program. Each state's apportionment would be administered by the state's department of transportation. The federal share of the cost of projects and activities under the Safe Routes to School Program is 100%, and funds ware to remain available until expended. Funds are not transferable and will remain available until expended.

In P.L. 109-59, agencies eligible for funding under this program include state, local, and regional agencies, including nonprofit organizations, that demonstrate an ability to meet the requirements of the program. Funds apportioned under the program may be used for planning, design, and construction of infrastructure-related projects that will substantially improve the ability of students to walk and bike to school. Projects include sidewalk improvements, traffic calming and speed reduction improvements, on-street bicycle facilities, off-street bicycle and pedestrian facilities, pedestrian and bicycle crossing improvements, secure bicycle parking facilities, secure bicycle parking facilities, and traffic diversion improvements in the vicinity of schools.[7]

Funds allocated to states under this program may also be used for noninfrastructure-related (or behavioral) activities to encourage walking and bicycling to school, such as public awareness campaigns and outreach to press and community leaders, traffic education and enforcement in the vicinity of schools, student sessions on bicycle and pedestrian safety, health, and environment, and funding for training, volunteers, and coordinators of safe routes to school programs. Non-infrastructure-related spending should not be less than 10% and not more than 30% of the amount apportioned to a state for the program. Each state receiving an apportionment under this program

[5] There are 12 enhancement activities in all.

[6] National Transportation Enhancements Clearinghouse. *Connections*. Summer 2005. p. 2.

[7] The definition of "in the vicinity of schools" means the area within bicycling or walking distance of the school (approximately 2 miles).

is required to use a sufficient amount of the apportionment to fund a full-time position of coordinator of the state's safe route to school program.

The Secretary is required to make grants to a national nonprofit organization engaged in promoting safe routes to schools to operate a national safe routes to school clearinghouse; to develop information and educational programs on safe routes to school; and to provide technical assistance and disseminate techniques and strategies used for successful safe routes to school programs. Funding for the clearinghouse would come from the Secretary's administrative expenses set aside. Section 1404 also establishes a task force to study and develop a strategy for advancing safe routes to school programs nationwide. The results of the study are to be transmitted to Congress not later than March 31, 2006. **(CRS contact: Glennon Harrison)**

Transit Reauthorization

SAFETEA provides $45.3 billion in guaranteed funding for transit for the five-year authorization period (FY2005-FY2009). Including FY2004 transit funding, the six-year total is $52.6 billion, a 46% increase over the $36 billion guaranteed for transit in TEA-21.[8]

Within the overall increase, Congress shifted the share of funding going to various parts of the transit program. The share of transit funding going to the Urbanized Area Formula Program shrank from 47.9% under TEA-21 to 44.0%, while the share going to the Non-Urbanized (i.e. rural) Formula Program increased from 3.3% under TEA-21 to 5.2%.[9] Relatedly, the share of total transit formula funding going to four of the largest (in terms of population) states shrank by nearly 8% (though the share of the largest state in terms of population, California, increased by 1.2%), while the share going to the 40 least-populated states (plus the District and territories) increased by 11.1%.[10]

Generally, the act made only minor changes to the structure of the federal transit program. As described below, a few new programs were added, several new funding categories were created within existing programs, and some changes were made to existing programs. Other provisions in the act include a requirement that all federal agencies in the National Capital Region offer their employees a transit pass as a transportation fringe benefit (Section 3049); a provision making the alternatives analysis required as part of the New Starts program eligible for FTA grants (Section 3037), with 18 such studies earmarked for FY2006-FY2007; and earmarks for the Bus and Bus Facilities Program for FY2006-FY2009 (in TEA-21, there were no earmarks for that program for the last three years of the authorization period, leaving the earmarking during those years to the appropriations committees).

[8] The TEA-21 figures are not adjusted for inflation, so the percentage increase includes the effect of inflation. The "real" increase in transit funding over TEA-21 is somewhat less than 46%.

[9] *Transportation Weekly*, Table: "Shifting Priorities Within the Transit Program," August 17, 2005, p. 4.

[10] Ibid., "Winners and Losers: State Shares of Total Transit Formula Funding," August 17, 2005, p. 15.

New Programs

Growing States Program and High-Density States Program

These two programs provide a total of $1.7 billion in additional funding (about a 10% addition over the FY2006-FY2009 period) to the Urbanized Area Formula and Non-Urbanized Area Formula programs (Section 3038). Half of the funds under this pair of programs are apportioned to states according to population forecasts for 15 years beyond the date of the most recent Census, and are distributed to both urbanized and non-urbanized areas within each recipient state according to the ratio between urban and rural population within that state. The other half of the funding is distributed to urbanized areas in states whose population densities exceed 370 persons per mile.[11]

New Freedom Program

This 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" (Section 3019). It is authorized at a total of $339 million over the period FY2006-FY2009. This program will not be subject to the labor protection provisions of 40 U.S.C. 533(b) that apply to most other transit programs.

Alternative Transportation in Parks and Public Lands Program

This is a discretionary grant program to provide transportation alternatives to the private 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 (Section 3021). It has a total authorization of $97 million. This program will be exempt from the labor protection provisions of 40 U.S.C. 533(b) that apply to most other transit programs.

Small Transit Intensive Cities Formula Program

A new formula program was created within the Urbanized Area Formula Program, funded by a one-percent set-aside of the Urbanized Area Formula Program authorized funding (providing approximately $150 million total over the FY2006-FY2009 period)(Section 3034). This program provides additional funding for small (under 200,000 in population) urbanized areas that provide a level of transit service comparable to that provided by urbanized areas with populations between 200,000 and 1 million. The areas of transit service that are measured for this program are: passenger miles per vehicle revenue mile and vehicle revenue hour; vehicle revenue miles and hours per capita; and passengers and passenger miles per capita. This program is a response to an issue created by the formula for urbanized areas under 200,000 in population: unlike the formulas for larger urbanized areas, the formula for urbanized areas under 200,000 in population does not include any performance factors. One reason for this difference was to relieve transit providers in small areas of the burden of having to collect and report the same amount of data

[11] Currently, states exceeding that threshold are Connecticut, Delaware, Maryland, Massachusetts, New Jersey, New York, and Rhode Island. Though for the purposes of most transit programs the definition of "state" includes the District of Columbia and U.S. territories, eligibility for these programs is explicitly limited to the fifty states.

about their operations as agencies in the larger areas. But one result of the difference in treatment is that small areas that provide higher-than-average levels of transit service do not receive a level of funding that recognizes their efforts, compared to other small areas that do not offer a comparable level of service. Section 3033 of TEA-21 directed DOT to study the issue. DOT concluded that sufficient issues existed to consider changes in the Urbanized Areas Formula Program apportionment formulas to reward the extra effort of these transit-intensive areas.[12] This change will have the effect of shifting approximately 1% of funding from urbanized areas over 200,000 in population to those under 200,000 in population.

Small Starts Program

This program is a new category within the New Starts program, which funds new fixed-guideway transit systems or extensions to existing systems (Section 3011(a)5309(e)). New Starts projects seeking less than $75 million in federal funding (Small Starts) will be subject to a streamlined evaluation process, with fewer evaluation categories, compared to those projects seeking $75 million or more in federal funding. This program is authorized at $200 million annually for FY2007-FY2009. The exemption from the evaluation process for projects seeking less than $25 million in federal funding is eliminated. The federal share for New Starts projects (80%) was not changed.

New Apportionment Factors for the Formula Grants for Other than Urbanized Areas Program

$45 million was set aside from the Non-Urbanized Area Formula Program for grants to Indian tribes for public transportation on Indian reservations (Section 3013(c)). Also, 20% of the Non-Urbanized Area Formula program funding will now be apportioned according to a state's share of the nation's total non-urbanized land area. The remaining 80% of the program's funding will continue to be apportioned according to a state's share of the nation's total non-urbanized population. **(CRS Contact: (name redacted))**

Passenger Rail and Rail Safety Provisions

Maglev

The act authorizes a total of $90 million for magnetic levitation train deployment for FY2005-FY2009 (Section 1307; the authorization is in Section 1101(a)(18)). That is more than the $60 million in contract authority provided for maglev deployment under TEA-21 (TEA-21 also authorized an additional $950 million for this program that was never appropriated). Of the authorized funding, 50% is for a maglev project between Las Vegas and Primm, Nevada, and 50% is for a maglev project east of the Mississippi River. Under the TEA-21 deployment program, maglev projects in Pennsylvania and Maryland were selected to compete for the available funding. The explanatory language in the conference committee report on SAFETEA

[12] The study is available at http://www.fta.dot.gov/library/policy/rtc/.

notes that the Committee intends for this program to be administered as a new program and not as the continuation of any previously authorized program.[13]

High-Speed Rail Corridor Development

The act reauthorizes the Swift Rail Act, expanding the eligible expenses from "planning" to "development" of high-speed rail corridors (Section 9001). It continues the current authorized level of funding: $70 million annually for corridor development, and $30 million for high-speed rail technology improvements, for FY2006-2013.

Elimination of Rail-Highway Crossing Hazards in High-Speed Rail Corridors

The act authorizes a total of $50 million over the period FY2005-FY2009 for the elimination of rail-highway grade crossing hazards in high-speed rail corridors (Section 1103(f)).

Alaska Railroad

The act directs the Secretary of Transportation to make grants to the Alaska Railroad for capital rehabilitation and improvements benefitting passenger transportation (Section 9006). No specific amounts are authorized for these grants; the act authorizes "such sums as may be necessary." Another provision (Section 3034(d)(2)) provides that the amount apportioned to the Anchorage urbanized area under the Urbanized Areas Formula Program "shall be available to the Alaska Railroad for any costs related to its passenger operations."

Welded Rail and Tank Car Safety Improvements

The act requires the Federal Railroad Administration (FRA) to establish a program to review continuous welded rail joint bar inspection data from railroads and FRA track inspectors, and directs FRA to require track owners using continuous welded rail track to improve the identification of cracks in rail joint bars (Section 9005). FRA is also directed to develop regulations for appropriate design standards for pressurized tank cars, and recommend ways to reduce the risk of catastrophic fracture of pressurized tank cars constructed before 1989. **(CRS contact: (name redacted))**

[13] H.Rept. 109-203, p. 860.

Highway and Commercial Vehicle Safety Programs

Infrastructure Safety, including the Highway Safety Improvement Program (HSIP)

SAFETEA authorizes a new categorical grant program for highway safety, the Highway Safety Improvement Program (HSIP)(Section 1401). This program subsumes the existing roadway hazard elimination program (23 U.S.C. 152), which funded such projects as installing barriers and guard rails.

Under TEA-21 the Section 152 program and the Section 130 program (elimination of hazards at rail-highway grade crossings, such as by installing warning lights and gates), which focused on elimination of infrastructure hazards, were funded through a 10% set-aside from the Surface Transportation Program. This amounted to $560 million in FY2005. Of that amount, under TEA-21 criteria states were required to spend an amount equal to at least the amount provided in 1991 for hazard elimination (at least $317 million annually: $155 million for rail-highway hazard elimination and $162 million for other general roadway hazard elimination). States could use the remainder on other highway projects if they certified it was not needed for safety improvements.

The new HSIP Program is authorized at $1.2 billion in FY2006, rising to $1.3 billion by FY2009. This funding is apportioned by a formula using three ratios: one-third of the funds are apportioned based on a state's share of total lane-miles of federal-aid highways; one-third based on a state's share of total vehicle miles traveled on federal-aid highways; and one-third based on a state's share of fatalities on the federal-aid highway system. No state will receive less than 0.5% of the funding apportioned for this program.

The HSIP has two set-asides: $220 million is each year is reserved for rail-highway grade crossing hazard elimination (Section 130), with its own apportionment formula; and $90 million each year is reserved for projects on high risk rural roads (rural roads having fatality and incapacitating injury rates above the statewide average for such roads). In both cases, states that demonstrate to the Secretary's satisfaction that they have met all their needs for safety projects on grade crossings or on high risk rural roads can use their share of those funds for other safety projects. States are required to prepare a strategic highway safety plan. The overall program authorization is $1.2 billion in FY2006, rising to $1.3 billion by FY2009

The act, as mentioned earlier, also creates a new Safe Routes to Schools program (Section 1404) to fund infrastructure projects that increase the safety of children within two miles of primary and middle schools, in order to encourage children to walk or bike to school. The funding is apportioned by formula based on student enrollment, with a minimum of $1 million for each state. At least 10%, but not more than 30%, of the program funds are to be spent for programs dealing with behavior and other non-infrastructure projects. The program is authorized at $54 million in FY2005, rising to $183 million in FY2009.

Federal Traffic Safety Program and Associated State Grants

The act creates a new grant program to promote seat belt use (Section 2005). States that enact a primary seat belt law[14] after December 31, 2002 would receive a grant (states that have already enacted a primary seat belt law will also receive a smaller grant under this program). Alternately, a state that achieves a seat belt use rate of 85% or more for two years is also eligible for a grant under this program. The grant funds may be used for a variety of highway safety purposes; the federal share for projects funded by these grants is 100%. The program is authorized at $125 million annually for FY2006-FY2009.

The act also expands a grant program to reduce the rate of motorists driving while impaired by alcohol (Section 2007). To receive a grant, a state must have an alcohol-related fatality rate of 0.5 or less per 100 million vehicle miles traveled, or must be carrying out a series of programs, described below, to discourage driving while impaired. For FY2006, a state must be carrying out 3 of the specified programs, for FY2007a state must carry out 4 of the programs, and for FY2008 and FY2009 a state must be carrying out 5 of the specified programs. The specified programs are: check points or saturation patrols; a prosecution and adjudication program; annually increasing the percentage of drivers involved in fatal accidents whose blood is tested for its alcohol content; more severe penalties for drivers convicted of driving with a blood alcohol content of 0.15% or higher (compared to those convicted with lower levels of blood alcohol); a program for effective alcohol rehabilitation or courts that specialize in driving while impaired cases that emphasize close supervision of high-risk offenders; an effective strategy for preventing drinking by persons under age 21; an administrative license revocation system; and a program that returns "a significant portion" of fines collected for driving under the influence of alcohol to communities for comprehensive programs to prevent impaired driving. The grants may be used to fund any of the specified programs, or certain other related expenses. There is also a set-aside of up to 15% of the funds for this program for grants to the 10 states with the highest rates of impaired driving-related fatalities. The program has a total authorization of $555 million over the authorization period.

Other new programs in the act include a motorcyclist safety grant program (Section 2010) to fund safety training and education programs (authorized at $6 million for FY2006-2008, $7 million for FY2009); and an incentive grant program for states that require children between 50 and 65 pounds to be in appropriate child restraints (Section 2011, authorized at $6 million for FY2006-2008, $7 million in FY2009).

The act also directs that DOT establish standards to reduce vehicle rollover crashes, to reduce the incidence of occupants being thrown from vehicles in rollover crashes, to increase the roof strength of passenger vehicles to protect occupants in rollover crashes (Section 10301), and to enhance passenger motor vehicle occupant protection in side impact crashes (Section 10302). **(CRS Contact: (name redacted))**

Intelligent Transportation Systems (ITS)

ITS, often consisting of communication systems, sensors or monitoring equipment, and computers, is used in highway or transit projects, facilities, or operations with the intention of

[14] A primary seat belt law allows police officers to stop a vehicle for a violation of a seat belt use law; no other violation of law is required to initiate the traffic stop.

improving their performance or safety. For example, ITS enables traffic management centers to receive real-time video and other measures or indicators of traffic flow, incidents, events, or crashes, as well as roadway and weather conditions. Such information can help operators redirect traffic, coordinate emergency response, or improve the operation and coordination of the surface transportation system.

During the later years of TEA-21, the direct federal investment in ITS totaled about $230 million per year. (That amount does not include federal aid highway funds allocated by the states to deploy ITS.) Of that annual total, around $100 million was for ITS research and around $120 million was for deployment of ITS.

SAFETEA provides $110 million annually for ITS research (Section 5101). The ITS deployment program is terminated after FY2005; ITS project costs are now eligible expenses in several of the core highway programs.[15] The act provides for advancing and testing new technologies, improving ITS standards and architecture, and conducting training, including a requirement for the DOT to develop a national ITS program plan (Section 5301). **(CRS Contact: (name redacted))**

Research and Development and Technology Deployment

Both the short- and long-term, research and development, as well as technology deployment activities (RD and TD) have a role in helping to reduce the various challenges that affect the performance or operation of the nation's surface transportation systems. These challenges include congestion, security, loss of life and injury due to traffic crashes, degradation of environmental or life quality (e.g., suburban sprawl), and the continual need for infrastructure rehabilitation. The federal role in RD and TD seeks to advance and accelerate the use of improved or safer technologies, processes, policies, vehicles, and infrastructure to reduce these challenges. In the surface transportation arena, the federal role is primarily administered or overseen by the FHWA, FTA, NHTSA, and the Research and Innovative Technology Administration (RITA).[16] In terms of the transportation budget, two of the largest efforts of RD and TD pertain to ITS and FHWA's RD and TD program (discussed below). This section deals primarily with funds used to support FHWA-administered programs.

FHWA conducts an extensive RD and TD program that involves all aspects of the highway system. For these activities, Title V of SAFETEA authorizes roughly $295 million per year, up from roughly $200 million annually under TEA-21. For each of the years FY2005-FY2009, SAFETEA authorizes the following amounts for transportation research and education: $169.4 million for surface transportation research, development, and deployment; $26.7 million for training and education, $27 million for the Bureau of Transportation Statistics, and $69.7 million for the University Transportation Research Program. (SAFETEA also authorizes research, development, and testing funds for transit and motor carrier activities as well as for a variety of

[15] SAFETEA does have an ITS deployment grant program for commercial vehicles operations (Section 4126).

[16] The former Research and Special Programs Administration (RSPA) in DOT was divided into two new administrations by P.L. 108-246, which was signed into law on November 30, 2004: RITA and the Pipeline Hazardous Materials Safety Administration (PHMSA).

other technological objectives.) Research funds are used primarily to advance and deploy technologies intended to improve highway pavements, structures, roadway safety, and study highway policies. Some of the technology deployment funds are earmarked for specific types of research or projects, and much of the university-oriented funds are earmarked for specific institutions. Many state and industry experts assert that FHWA's RD and TD funds are of fundamental importance to the states and their long-term ability to maximize the effective use of federal aid funds. **(CRS contact: (name redacted))**

Freight Rail and Intermodal Provisions

Title IX of SAFETEA, "Rail Transportation," addresses three issues with respect to freight rail transportation: infrastructure capacity, rail-to-rail competition, and grade crossing conflicts. In light of increasing international trade volumes and growing congestion on certain parts of the nation's highway system, Congress has been considering the capability of the freight railroads to expand their infrastructure capacity to handle more freight. Freight railroads primarily finance their infrastructure needs without government aid. Congress has been evaluating how, and under what circumstances, it might be appropriate for the federal government to assist the railroads in expanding their networks. Another rail issue is the increasing frequency of freight train traffic through the middle of some towns and city neighborhoods. More frequent trains have increased delays for motor vehicle traffic at grade crossings. While railroads have reduced the total number of railway miles they maintain in service, they are utilizing their remaining track more intensely in an effort to improve operating efficiency. A further congressional issue of a perennial nature since price deregulation of the rail industry in 1980 is the captive shipper question. Some Members of Congress, who have rail shippers in their district served by only one railroad, are concerned with the high rail rates and poor rail service they contend these shippers receive.

All of these rail issues have been debated in the context of stand alone legislation introduced in the 109th Congress but SAFETEA also reflects these issues in title IX of the act. For example, section 9007 requests the Transportation Research Board of the National Academies to report to Congress on the performance of the nation's rail system in terms of service quality and rates, the railroads' ability to meet projected demand, and the effectiveness of public policy in balancing the need for railroads to earn adequate revenues with those of shippers for reasonable rates and adequate service. Congress also provided the following two funding mechanisms in title IX of SAFETEA that are intended, at least partially, to address these issues.

Railroad Rehabilitation and Improvement Financing Program (RRIF) Loan Program Expansion

SAFETEA (section 9003) expands a federal loan and loan guarantee program authorized in TEA-21 for rehabilitating and improving rail track. The RRIF Program expands tenfold from $3.5 billion to $35 billion in total value of available loans. Of the $35 billion total, $7 billion is reserved for smaller, regional and short-line railroads (non-Class I railroads). SAFETEA also amends existing program language to expedite loan availability. Section 9003 states that the Secretary of Transportation "shall" provide loans rather than "may" provide loans. It also states that the Secretary shall not require collateral from a loan applicant or that the loan applicant have previously sought a loan from another source, and requires the Secretary to approve or disapprove a loan within 90 days. Significantly, with respect to rail-to-rail competition and those shippers who refer to themselves as "captive" to one railroad, section 9003 states that a loan my be issued

"solely for the purpose of constructing a rail connection between a plant or facility and a second rail carrier, limited option rail freight shippers that own or operate a plant or other facility that is served by no more than a single railroad." Finally, SAFETEA adds "enhancing rail infrastructure capacity and alleviating rail bottlenecks" to the list of priorities that the Secretary should consider in issuing RRIF loans.[17]

Rail Line Relocation

SAFETEA (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. At least half of the grants awarded must not be more than $20 million each and the federal share is not to exceed 90% of the total cost of a project.

Rail Project Earmarks

Enhancing rail infrastructure capacity and eliminating grade crossings were also funded in SAFETEA through project earmarks. Under "Projects of National and Regional Significance" (section 1301), SAFETEA provides $90 million for improving a rail line connecting Virginia seaports and Ohio, $100 million for further planning of a freight rail tunnel under New York harbor, $100 million to improve rail connections and eliminate grade crossings in the Chicago area, $125 million to eliminate grade crossings on a rail line in communities east of Los Angeles, $14 million for further study of a plan to relocate El Paso rail yards out of the city, and $15 million to relocate a rail line connection to the Port of Portsmouth, Virginia in order to eliminate grade crossings.

Study of Rail Transportation and Regulation

SAFETEA directs that DOT conduct a comprehensive study of the nation's rail transportation system since its deregulation in 1980, including the service levels, service quality, and rates of the major railroads, the projected demand for freight rail service and constraints on meeting that demand, and "the effectiveness of public policy in balancing the need for railroads to earn adequate returns with those of shippers for reasonable rates and adequate service" (Section 9007).

Intermodal Freight Pilot Program

Section 1306 of SAFETEA 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 that are located in Oregon, Georgia, California, Alaska, and North Carolina to carry out the program.

[17] Further information on the RRIF program, including a listing of railroads who have received loans, is available at http://www.fra.dot.gov/us/content/177.

Recreational Trails Program (RTP)

SAFETEA continues the Recreational Trails Program (RTP), initially authorized under ISTEA and expanded under TEA-21, as a state-administered, federal-aid program to help states develop and maintain recreational trails for motorized and non-motorized trail uses. The RTP provides funds for all types of recreational trail use, including hiking, running, bicycling, equestrian use, wheelchair use, snowmobiling, four wheel driving, off-road motorcycling, all-terrain riding, and other off-road vehicle use. RTP funds may not be used for property condemnation, constructing new trails for motorized use on National Forest or Bureau of Land Management lands unless the project is consistent with resource management plans, or facilitating motorized access on otherwise non-motorized trails.

Funding/Formula

In §1101(a)(8), SAFETEA authorizes a total of $370 million in contract authority for the RTP for FY2005-2009 ($60 million FY2005, $70 million for FY2006, $75 million for FY2007, $80 million for FY2008, and $85 million for FY2009). The measure also sets a specified level of $840,000 annually for administrative expenses.[18] Funds are allocated to the states by legislative formula: 50% equally among all eligible states and 50% in proportion to the amount of off-road recreational fuel use. Under SAFETEA, the RTP is subject to the same annual obligation limitation as other federal-aid highway programs.

States are required to use 30% of their RTP funds for motorized trail uses, 30% for non-motorized trail uses, and 40% for diverse trail uses. SAFETEA eliminates the discretionary waiver from the 30% provisions, typically requested through state trail advisory committees for motorized and nonmotorized projects, but retains the small state exemption for any state with a total land area of less than 3.5 million acres. The "sliding scale" provision in 23 U.S.C. §120(b) provides for additional federal share under the federal-aid highway program in states with large amounts of federal lands. SAFETEA amends the program to change the federal share for RTP projects from a strict 80% to the sliding scale share used in some other federal-aid highway programs. Additionally, SAFETEA encourages, but does not require, states to use youth conservation or service corps in the construction and maintenance of recreational trails.

Eligibility

SAFETEA amends the existing category of permissible uses[19] for RTP funding to expand use of educational funds for non-law enforcement trail safety, trail use monitoring patrols, and trail-related training, but in an amount not to exceed 5% of the apportionment made to the state for the fiscal year. A new provision, 23 U.S.C §206(b)(2)(F), permits funding for trail condition assessment for accessibility and maintenance.

ISTEA and TEA-21 required RTP sponsors to complete environmental compliance documentation before applying for RTP funds. SAFETEA permits pre-approval planning and environmental compliance costs to be credited toward the non-federal share for RTP projects,

[18] 23 U.S.C. §104(h)(1).

[19] 23 U.S.C. §206(d)(2).

limited to costs incurred less than 18 months prior to project approval. **(CRS contact: (name reda cted))**

Environmental Issues, Including "Streamlining"

Before final design, property acquisition, or construction on a highway or transit project can proceed, DOT (i.e., FHWA or FTA) must comply with certain environmental review requirements, including those of the National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. 4321 et seq.). NEPA requires all federal agencies to consider the environmental impacts of proposed federal actions. To ensure that environmental impacts are considered before final decisions are made, NEPA requires DOT to prepare an environmental impact statement (EIS) for any federally funded action that *significantly* affects the quality of the human environment. Projects for which it is not initially clear whether impacts will be significant require the preparation of an environmental assessment (EA). If, it is determined, at any time during the assessment, that a project's impacts will be significant, an EIS must be prepared. Projects that do not individually or cumulatively have a significant social, economic, or environmental effect, and which DOT has determined from past experience have no significant impact, are processed as categorical exclusions. (For more detailed information about the NEPA process, see CRS Report RL32024, *Background on NEPA Implementation for Highway Projects: Streamlining the Process*, by (name redacted).)

Another requirement that is generally carried out within the context of the NEPA process is compliance with Section 4(f) of the Department of Transportation Act of 1966.[20] Section 4(f) requirements apply to the use of publicly owned parks and recreation areas, wildlife and waterfowl refuges, and to publicly or privately owned historic sites of national, state, or local significance. The law prohibits the use of a Section 4(f) resource for a transportation project [21] unless there is no "prudent and feasible" alternative to do otherwise, and the project includes all possible planning to minimize harm to the resource.

Some Members of Congress have expressed concerns that the environmental review process for large, complex highway and transit projects can be inefficient, leading to delays in completion of those projects. To address this concern, "Environmental Streamlining" provisions were included in TEA-21. Although not defined by the statute, FHWA defines environmental streamlining as the timely delivery of federally funded transportation projects, while protecting and enhancing the environment. Because major transportation projects may be affected by dozens of federal, state, and local environmental requirements, administered by multiple agencies, improved interagency cooperation was identified by Congress as a critical element to the success of environmental streamlining. The streamlining provisions of TEA-21 required the Department of Transportation (DOT) to develop and implement a "coordinated environmental review process" for highway projects that either do have, or may have, a significant impact on the environment (approximately

[20] Section 4(f) of the DOT Act was originally set forth at 49 U.S.C. § 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).

[21] NEPA applies to *all* federal agencies, Section 4(f) requirements apply only to DOT.

9% of all highway projects fall into one of these categories).[22] This coordinated review process encouraged full and early participation by all relevant federal and state agencies required to participate in a highway project.

Since the passage of TEA-21, numerous administrative activities have been undertaken to facilitate streamlining. However, some Members of Congress expressed the need for further legislation to expedite the environmental review process required of highway construction and transit projects. As a result, SAFETEA includes provisions intended to further streamline the environmental review process. The provisions deal primarily with NEPA and Section 4(f) requirements, but could also be used to expedite compliance with other environmental requirements. (For detail about the NEPA process, Section 4(f) requirements, and streamlining provisions in SAFETEA, see CRS Report RL33057, *Surface Transportation Reauthorization: Environmental Issues and Legislative Provisions in SAFETEA-LU (H.R. 3)*, by (name redacted).)

Unlike TEA-21, the term "streamlining" is not used in SAFETEA. However, the intended effect is the same—to expedite compliance with certain environmental requirements, primarily NEPA and Section 4(f). With regard to NEPA, many of the provisions in SAFETEA codify existing regulatory requirements, such as: specifically designating DOT as the lead agency for surface transportation projects; specifying the role of the lead and cooperating agencies; and allowing deadlines for decision-making to be set.[23] Following are key SAFETEA provisions related to streamlining that change existing statutory or regulatory requirements:

- The establishment of a new entity in the NEPA process, referred to as a "participating agency," that includes those that intend to submit comments on NEPA documentation in addition to those that meet the definition of a cooperating agency;
- The establishment of procedures to be followed by lead and participating agencies for the collaborative development of the project's statement of purpose and need and project alternatives, including the establishment of deadlines on comments;
- The establishment of a 180-day statute of limitation on judicial claims on final agency actions related to environmental requirements;
- Authorization to allow the use of transportation funds to help agencies required to expedite the environmental review process;
- The establishment of a dispute resolution process when agencies disagree on elements of the environmental review process;
- Authorization to allow states to determine whether certain classes of projects may be processed as categorical exclusions; and
- Authorization to allow the establishment of state pilot programs to allow participating states to assume certain federal responsibilities regarding compliance with environmental laws.

[22] General Accounting Office, *Highway Infrastructure: Stakeholders' Views on Time to Conduct Environmental Reviews of Highway Projects*, GAO-03-534, May 23, 2003, pp 3-4.

[23] For more information on issues related to streamlining, see CRS Report RL32024, *Background on NEPA Implementation for Highway Projects: Streamlining the Process*, by (name redacted).

With regard to Section 4(f), under §6009(a), SAFETEA allows for the use of publicly owned parks and recreation areas, wildlife and waterfowl refuges if it is determined that such use would result in "de minimis impacts" to that resource. That determination must receive concurrence from the official with jurisdiction over that resource (e.g., the U.S. Fish and Wildlife Service, the National Park Service, or applicable state or local park authorities). SAFETEA similarly allows for the use of a publicly or privately owned historic site if a de minimis impact determination is made in accordance with provisions of the National Historic Preservation Act (16 U.S.C. 470f). Further, §6009(b) requires DOT, within one year, to issue regulations clarifying factors to be considered and standards to be applied in determining whether alternatives are "prudent and feasible" under the Section 4(f) requirements.

Also related to Section 4(f) requirements, §6007 of SAFETEA specifies that, under administrative procedures established under §106 of the National Historic Preservation Act, the Interstate System cannot be considered a "historic site" under provisions of Section 4(f).[24] It may still be determined that individual elements of the Interstate System possess an independent feature of historic significance that may still be protected under Section 4(f) requirements. **(CRS contact: (name redacted))**

The CMAQ Program

In the year following the Clean Air Act Amendments of 1990, the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA)[25] directed the Secretary of DOT to establish and implement a Congestion Mitigation and Air Quality Improvement (CMAQ) program. The primary purpose of the CMAQ Program is to reduce emissions from highway travel, as a means to assist states in complying with the National Ambient Air Quality Standards (NAAQS).[26] In particular, it authorized funding for programs and projects intended to reduce carbon monoxide (CO) and ozone. Specific types of projects eligible for CMAQ funds include, but are not limited to: transportation control measures; inspection and maintenance programs for auto emission controls; the purchase of publicly owned, alternative fuel vehicles; traffic flow improvements; and pedestrian and bicycle facilities and programs.[27]

ISTEA established a formula to apportion CMAQ funds based largely on a state's population and pollution reduction needs. The population of each area in a state that is a not meeting the NAAQS for ozone and/or CO is multiplied by a weighting factor based on the level of nonattainment (e.g., moderate, serious, severe) with the NAAQS. States with no maintenance or nonattainment areas for ozone or CO are guaranteed a minimum apportionment of 0.5 percent of each year's authorized CMAQ funds. TEA-21 expanded the program to allow the use of CMAQ funds for projects and programs intended to reduce certain types of particulate matter (PM). TEA-21 did not, however, change the apportionment formula based on ozone and CO. Therefore, states with

[24] Those administrative procedures were published in a March 10, 2005 *Federal Register* notice, p. 11928.

[25] ISTEA was the surface transportation authorization legislation for FY1991-FY1997.

[26] A geographic area that meets or exceeds the standard is considered to be in "attainment" for a particular NAAQS; areas that do not meet a standard are in "nonattainment." A "maintenance" area is one that was previously in nonattainment, but is currently attaining the NAAQS subject to a maintenance plan. For a more extended discussion of issues regarding NAAQS, see CRS Report RL30853, *Clean Air Act: A Summary of the Act and Its Major Requirements*, by (name redacted) et al..

[27] Ibid.

maintenance or nonattainment areas for only PM receive the guaranteed minimum CMAQ funding.

CMAQ funding for FY2005-FY2009 totals $8.6 billion. This compares to a total of $8.1 billion in funding authorization for the six fiscal years under TEA-21. SAFETEA amends the CMAQ apportionment formula under 23 U.S.C. §104(b)(2) and the CMAQ program requirements under 23 U.S.C. §149(b). Under § 1808(b), SAFETEA expands program funding eligibility requirements to specifically allow the following projects to be eligible for CMAQ funds: advanced truck stop electrification systems; projects that will improve transportation systems management and operations; integrated, interoperable emergency communications equipment; and diesel retrofits (under §1808(d), SAFETEA includes a directive that diesel retrofit projects will have funding priority over other projects). SAFETEA changes the requirements applicable to states receiving the minimum apportionment to allow them to use CMAQ funds for projects that would otherwise meet CMAQ eligibility requirements (§1808(c)).

Under §1808(f), SAFETEA directs DOT, in consultation with EPA, to evaluate and assess a representative sample of CMAQ projects to determine their impacts on air quality and congestion levels and to ensure the effective implementation of the program. Directs DOT to maintain and disseminate a database describing project impacts (no direct funding is provided for the evaluation or the database). (For detail on provisions related to the to the CMAQ program, see CRS Report RL33057, *Surface Transportation Reauthorization: Environmental Issues and Legislative Provisions in SAFETEA-LU (H.R. 3)*, by (name redacted)) **(CRS contact: (name redacted))**

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 124 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. Specifically, projects must not "cause or contribute to any new violation of any standard," "increase the frequency or severity of any existing violation," or "delay timely attainment of any standard." Because new highways generally lead to an increase in vehicle miles traveled and related emissions, both the statute and regulations require that an area's Transportation Improvement Program (TIP), which identifies major highway and transit projects an area will undertake, demonstrate conformity each time it is revised (i.e., at least every two years). Highway and transit projects cannot receive federal funds unless they are part of a conforming TIP.

While conformity has been required for more than a decade, the impact of the conformity requirements is expected to grow in the next few years for several reasons. The growth of emissions from SUVs and other light trucks and greater than expected increases in vehicle miles traveled have both made it more difficult to demonstrate conformity; recent court decisions have tightened the conformity rules; and the implementation over the next three years of more stringent air quality standards (both for ozone and for fine particles such as those found in diesel exhaust) will mean that additional areas are subject to conformity. Thus, numerous metropolitan areas could face a temporary suspension of highway and transit funds unless they impose sharp

reductions in vehicle, industrial, or other emissions. In a 2003 survey, the Government Accountability Office (GAO) found that, over the previous six years, only 5 metropolitan areas had had to change transportation plans in order to resolve a conformity lapse; but about one-third of local transportation planners surveyed expected to have difficulty demonstrating conformity in the future. (See U.S. GAO, *Environmental Protection: Federal Planning Requirements for Transportation and Air Quality Protection Could Potentially Be More Efficient and Better Linked*, April 2003.)

The Clean Air Act provides no authority for waivers of conformity, and the only grace period allowed has been for one year following an area's designation as nonattainment. Only a limited set of exempt projects (mostly safety-related or replacement and repair of existing transit facilities) can be funded in lapsed areas. The rules do not even allow funding of new projects that might reduce emissions, such as new transit lines. These limitations are among the issues of concern. 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. In its 2003 report, the GAO recommended that "relevant federal agencies ... consider extending the three-year time frame between required [long range] transportation plan updates and asking the Congress to amend the Clean Air Act to change the conformity rules to match ...." This recommendation was generally supported by transportation planners and highway builders, but opposed by environmental groups and air quality planning officials.

As enacted, P.L. 109-59 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 law also establishes a 12-month grace period following a failure to demonstrate conformity before a lapse would be declared. (For additional information, see CRS Report RL32106, *Transportation Conformity Under the Clean Air Act: In Need of Reform?*, by (name redacted).) **(CRS contact: Jim McCarthy)**

Appendix. SAFTEA Authorization Levels, FY2005-FY2009

Table A-1. SAFETEA Authorization Levels, FY2005-FY2009

(in millions of dollars)

Authorization	FY2005	FY2006	FY2007	FY2008	FY2009	TOTAL
Title I—Federal-Aid Highways						
Interstate maintenance program	4,883.760	4,960.789	5,039.059	5,118.589	5,199.399	25,201.595
National highway system	5,911.200	6,005.257	6,110.828	6,207.937	6,306.611	30,541.833
Bridge program	4,187.709	4,253.530	4,320.411	4,388.369	4,457.422	21,607.442
Surface transportation program	6,860.097	6,269.833	6,370.470	6,472.727	6,576.630	32,549.757
Congestion mitigation & air quality improvement program	1,667.255	1,694.102	1,721.380	1,749.099	1,777.263	8,609.100
Highway safety improvement program	0.000	1,235.810	1,255.709	1,275.929	1,296.474	5,063.923
Appalachian development highway system	470.000	470.000	470.000	470.000	470.000	2,350.000
Recreational trails program	60.000	70.000	75.000	80.000	85.000	370.000
Federal lands highways program						
Indian reservation roads	300.000	330.000	370.000	410.000	450.000	1,860.000
Park roads & parkways	180.000	195.000	210.000	225.000	240.000	1,050.000
Refuge roads	29.000	29.000	29.000	29.000	29.000	145.000
Public lands highways	260.000	280.000	280.000	290.000	300.000	1,410.000
National corridor infrastructure improvement program	194.800	389.600	487.000	487.000	389.600	1,948.000
Coordinated border infrastructure program	123.000	145.000	165.000	190.000	210.000	833.000
National scenic byways program	26.500	30.000	35.000	40.000	43.500	175.000
Construction of ferry boats & ferry terminal facilities	38.000	55.000	60.000	65.000	67.000	285.000
Puerto Rico highway program	115.000	120.000	135.000	145.000	150.000	665.000
Projects of national & regional significance	177.900	355.800	444.750	444.750	355.800	1,779.000
High priority projects program	2,966.400	2,966.400	2,966.400	2,966.400	2,966.400	14,832.000
Safe routes to school program	54.000	100.000	125.000	150.000	183.000	612.000

Authorization	FY2005	FY2006	FY2007	FY2008	FY2009	TOTAL
Deployment of magnetic levitation transportation projects	0.000	15.000	15.000	30.000	30.000	90.000
National corridor planning & development & coordinated border infrastructure programs	140.000	0.000	0.000	0.000	0.000	140.000
Operation Lifesaver (set aside from STP in 2005)	0.000	0.560	0.560	0.560	0.560	2.240
Rail-highway X-ing hazard elim. in high speed rail corridors	0.000	7.250	10.000	12.500	15.000	44.750
Equity bonus program	7,427.696	6,872.700	8,326.693	9,175.197	9,093.266	40,895.552
Revenue aligned budget authority	0.000	0.000	ssambn[a]	ssambn[a]	ssambn[a]	ssambn[a]
Emergency relief when allocations exceed $100M (general fund)	ssambn[a]	ssambn[a]	ssambn[a]	ssambn[a]	ssambn[a]	ssambn[a]
Transportation, community, and system preservation program	25.000	61.250	61.250	61.250	61.250	270.000
Transportation infrastructure finance & innovation act amendments	122.000	122.000	122.000	122.000	122.000	610.000
Value pricing pilot program	11.000	12.000	12.000	12.000	12.000	59.000
Subtotal Title I	37,108.964	38,127.741	40,447.148	41,824.632	41,981.990	199,490.476
Title II—Highway Safety						
Highway safety programs	163.680	217.000	220.000	225.000	235.000	1,060.680
Highway safety R&D	71.424	110.000	107.750	107.750	105.500	502.424
Occupant protection incentive grants	19.840	25.000	25.000	25.000	25.000	119.840
Safety belt performance grants	0.000	124.500	124.500	124.500	124.500	498.000
State traffic safety information system improvements	0.000	34.500	34.500	34.500	34.500	138.000
Alcohol-impaired driving countermeasures incentive grant program	39.680	120.000	125.000	131.000	139.000	554.680
National driver register	3.968	4.000	4.000	4.000	4.000	19.968
High visibility enforcement program	0.000	29.000	29.000	29.000	29.000	116.000
Motorcyclist safety	0.000	6.000	6.000	6.000	7.000	25.000
Child safety & child booster seat safety incentive grants	0.000	6.000	6.000	6.000	7.000	25.000
Subtotal Title II	298.592	693.500	699.500	711.000	729.000	3,131.592

Authorization	FY2005	FY2006	FY2007	FY2008	FY2009	TOTAL
Title III—Public Transportation						
Formula & bus grants	3,999.918	6,979.931	7,262.775	7,872.893	8,360.565	34,476.082
Urbanized area formula grants	3, 593.196	3,466.681	3,606.175	3,910.843	4,160.365	18,737.260
bus & bus facility grants	669.600	822.250	855.500	927.750	984.000	4,259.100
Fixed guideway modernization	1,204.685	1,391.000	1,448.000	1,570.000	1,666.500	7,280.185
Planning programs	72.416	95.000	99.000	107.000	113.500	486.616
Formula grants for special needs	94.527	112.000	117.000	127.000	133.500	584.027
Formula grants for other than urbanized areas	250.890	388.000	404.000	438.000	465.000	1,945.890
Job access and reverse commute formula program	0.000	138.000	144.000	156.000	164.500	602.500
New freedom program	0.000	78.000	81.000	87.500	92.500	339.000
Alternative transportation in parks and public lands	0.000	22.000	23.000	25.000	26.000	96.900
Capital Investment Grants						
Major capital investment grants of $75,000,000 or more	1,437.830	1,503.000	1,366.000	1,500.000	1,609.250	7,416.080
Capital investment grants of less than $75,000,000	0.000	0.000	200.000	200.000	200.000	600.000
Research & University Research Centers	54.560	58.000	61.000	65.500	69.750	308.810
Subtotal Title III	7,646.336	8,622.931	8,974.775	9,730.893	10,338.065	45,313.000
Title IV—Motor Carrier Safety						
Motor carrier safety grants	188.480	188.000	197.000	202.000	209.000	984.480
Commercial drivers' license program improvement grants	0.000	25.000	25.000	25.000	25.000	100.000
Border enforcement grants	0.000	32.000	32.000	32.000	32.000	128.000
Performance and registration information system management grant program	0.000	5.000	5.000	5.000	5.000	20.000
Commercial vehicle information systems and networks deployment	0.000	25.000	25.000	25.000	25.000	100.000
Safety data improvement grants	0.000	2.000	3.000	3.000	3.000	11.000
Subtotal Title IV	443.329	490.500	517.000	528.000	541.000	2,519.829

Authorization	FY2005	FY2006	FY2007	FY2008	FY2009	TOTAL
Title V—Transportation Research						
Surface transportation research program	196.400	196.400	196.400	196.400	196.400	982.000
Training & education	26.700	26.700	26.700	26.700	26.700	133.500
Bureau of transportation statistics	27.000	27.000	27.000	27.000	27.000	135.000
University transportation research	69.700	69.700	69.700	69.700	69.700	348.500
Intelligent transportation systems research	110.00	110.000	110.000	110.000	110.000	550.000
ITS deployment	122.000	0.000	0.000	0.000	0.000	122.000
Subtotal Title V	551.800	429.800	429.800	429.800	429.800	2,271.000
Title VI—Transportation Planning & Project Delivery						
Clean school bus program grants	0.000	55.000	55.000	0.000	0.000	110.000
Title VII—Hazardous Materials Safety	55.215	59.275	60.275	60.275	0.000	235.040
Title IX—Rail Transportation	0.000	451.000	450.800	450.000	450.000	1,801.800
Swift rail act reauthorization	0.000	100.000	100.000	100.000	100.000	400.000
Rail line relocation capital grant program	0.000	350.000	350.000	350.000	350.000	1,400.000
Title X—Miscellaneous	0.000	151.000	150.934	158.319		
NHTSA operations & research	0.000	136.000	142.800	149.900	157.400	586.100
Rescission of Unobligated Balances of Highway Contract Authority	0	0	0	0	-8,543.000	-8,543.000
TOTAL Gross, all sources	46,140.936	49,154.998	51,895.883	54,027.119	54,803.168	255,530.104
TOTAL Net, all sources	46,140.936	49,154.998	51,895.883	54,027.119	46,260.168	246,987.104

Source: Compiled from: FHWA, http://www.fhwa.dot.gov/safetealu/fundtables.htm for titles I, III, & V. For all other titles *Transportation Weekly.* Conference Report on H.R. 3. August 4, 2005 (data for these titles is still subject to revision).

Note: Totals and Subtotals reflect additional programs not specifically identified in the table. Hence totals may exceed the sum of their respective columns.

a. ssambn = such sums as may be necessary.

Author Contact Information

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CRS Policy Staff and Areas of Expertise

Area of Expertise	Name	CRS Division	Telephone
Highway Program Issues	John Fischer	RSI	7-....
	Bob Kirk	RSI	7-....
Trust Fund Issues	John Fischer	RSI	7-....
	Bob Kirk	RSI	7-....
Donor/Donee & Formula Issues	Bob Kirk	RSI	7-....
	John Fischer	RSI	7-....
Highway, Railroad, & Truck Safety	Randy Peterman	RSI	7-....
Auto and Traffic Safety (including NHTSA)	Randy Peterman	RSI	7-....
Intelligent Transportation Systems (ITS)	Randy Peterman	RSI	7-....
Transportation Enhancements & Planning (MPOs)	Glennon Harrison	RSI	7-....
Transit Program Issues	Randy Peterman	RSI	7-....
Intermodal/Freight Issues	(name redacted)	RSI	7-....
CMAQ	(name redacted)	RSI	7-....
Environmental Issues, Including Streamlining, Stormwater, and Section 4f	(name redacted)	RSI	7-....
Conformity with the Clean Air Act	Jim McCarthy	RSI	7-....
Recreational Trails	Sandy Johnson	RSI	7-....
Transportation Infrastructure Policy	John Fischer	RSI	7-....
	Bob Kirk	RSI	7-....
Surface Transportation Security	(name redacted)	RSI	7-....
Highway and Transit Program Data	(name redacted)	KSG	7-....
	Vanessa Cieslak	KSG	7-....

Division abbreviations: RSI = Resources, Science, and Industry Division, KSG = Knowledge Services Group.