

**JURISDICTION AND ACTIVITIES
SUBCOMMITTEE ON HIGHWAYS AND TRANSIT
110TH CONGRESS**

January 2007

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I. EXECUTIVE SUMMARY

The Subcommittee on Highways and Transit has responsibility for the development of national surface transportation policy, construction and improvement of highway and transit facilities, implementation of safety and research programs, and regulation of commercial vehicle operations. Within this scope of responsibilities, the Subcommittee has jurisdiction over many U.S. Department of Transportation (DOT) programs, including the following:

- Federal-aid Highway Program administered by the Federal Highway Administration (FHWA)
- Federal transit program administered by the Federal Transit Administration (FTA)
- Highway safety grants and research programs administered by the National Highway Traffic Safety Administration (NHTSA)
- Commercial vehicle safety programs and regulations administered by the Federal Motor Carrier Safety Administration (FMCSA)
- Surface transportation research administered by FHWA and FTA and coordinated through the Research and Innovative Technology Administration (RITA).

Many of these agencies, especially the FTA and FMCSA, also have security oversight and enforcement responsibilities as part of their regulatory functions. In addition, the Subcommittee has jurisdiction over certain provisions of the Clean Air Act pertaining to air quality compliance through the transportation planning and project development process administered by FHWA and FTA.

In the course of discharging its responsibilities, the overriding concerns of the Subcommittee are to: (1) adjust federal transportation policy to meet current and future needs; (2) ensure adequate resources are made available to DOT, the States, Indian tribes, and localities to carry out programs and projects authorized by federal law; (3) maintain the direct linkage between federal investment in transportation programs and dedicated revenues coming into the federal Highway Trust Fund; (4) enhance funding equity among the States, (5) review program implementation by federal agencies; and (6) monitor development of emerging transportation issues.

II. INTRODUCTION

The enactment of long-term reauthorization legislation for federal-aid highway, transit, and highway safety programs in the 109th Congress was a significant achievement for the Committee on Transportation and Infrastructure. The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) was signed into law by the President in 2005. This legislation reauthorizes federal surface transportation programs through 2009.

This legislation builds on the foundation established by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) and the Transportation Equity Act for the 21st Century (TEA 21), enacted in 1998. SAFETEA-LU provides higher levels of funding for existing transportation programs, strengthens safety, and enhances service and capacity by establishing new programs, tackles congestion by focusing on high-cost, multi-jurisdictional projects, and expedites delivery of vital transportation projects.

SAFETEA-LU also preserved the direct link between investment in transportation programs and revenues coming into the federal Highway Trust Fund (HTF). TEA 21 amended the Federal Budget Act to guarantee that federal transportation excise taxes are used for transportation programs. TEA 21 established budgetary firewalls – one for highway and highway safety programs, another for transit programs – to protect investments in these programs from being reduced in order to enable greater spending in other discretionary programs. These firewalls match minimum investment levels for highway, highway safety, and transit programs with HTF receipts and wall off highway and transit investments from each other and from all other domestic discretionary spending.

The specific programs reauthorized, created, or expanded by SAFETEA-LU are described in detail in the remainder of this document.

III. FEDERAL-AID HIGHWAY PROGRAM

A. General Background

The Federal-aid Highway Program is a federally-assisted, state-run program in which the states plan, design, and construct highway projects as well as operate and maintain major roads. The federal government provides financial resources and technical assistance to state and local governments for constructing, preserving, and improving the National Highway System and other urban and rural roads that, though not on the System, are eligible for federal aid.

There are nearly four million miles of public roads in the United States, but only about 965,000 miles of these roads are eligible for federal aid. Governments at all levels provided \$152 billion in 2005 for highways and bridges in the form of capital outlay, maintenance, highway and traffic services, administration, highway safety enforcement, and debt service. Federal investment of \$32.9 billion in that year accounted for about 21.6 percent of the total.

B. History of Federal Assistance for Highway Construction

Federal assistance for highway construction dates back to the early 20th century when \$500,000 was provided in the Post Office Appropriation Bill of 1912. Much expanded federal assistance began with the Federal-Aid Highway Act of 1944, which authorized the construction of a “National System of Interstate Highways.” But the construction program did not get off to a good start due to, among other things, the lack of a sound financing mechanism.

The landmark Federal-Aid Highway Act of 1956 authorized a 41,000-mile National System of Interstate and Defense Highways. Perhaps more importantly, the Act established the HTF, into which were deposited receipts from federal excise taxes paid by highway users, to be used for the highway program. This dedicated funding mechanism provided financial certainty for the highway program, including the Interstate Program. The 13-year authorization of the 1956 Act was equally important because it gave the states and highway construction industry the continuity needed to develop and build highway projects.

The Interstate System was established as a cost-to-complete system. As a general rule, each route was required to meet certain design specifications. Every state was provided federal funding to cover 90 percent of the cost of constructing its route segments; the state provided the remaining 10 percent. With the enactment of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), the Interstate System was declared complete, with only a few short segments remaining to be constructed. The final ISTEA funds for these segments were apportioned to the states in FY 1995.

The Interstate System is the crowning achievement of the Federal-aid Highway Program. It comprises about 1.2 percent of all public road mileage, yet carries 24.4 percent of the total traffic on all public roads. In 2006, the Interstate System celebrated its 50th anniversary.

With the completion of the Interstate System, the major focus of the Federal-aid Highway Program shifted to:

- supporting the National Highway System, a 160,000-mile network of Interstate highways and other major road networks that carries 40 percent of the nation’s highway traffic;
- guaranteeing that taxes collected from highway users are used to maintain and improve our nation’s surface transportation infrastructure;
- developing an efficient intermodal surface transportation system that enhances passenger travel and freight shipment while controlling transportation costs;
- ensuring the safety and security of the nation’s highways and bridges;
- expediting the delivery of federal-aid highway projects; and
- expanding the forms of federal financial assistance for highway project development and construction.

C. Major Developments in Federal Fuel Excise Taxes

The Federal-aid Highway Program is financed by federal excise taxes levied on motor fuels and various highway-related products such as tires and heavy trucks. Revenues from these taxes are deposited into the HTF and may be used only for eligible transportation projects and activities.

When the HTF was established in 1956, the excise tax rates for highway use of motor fuels were three cents per gallon. Since then the tax rate and structure have been revised several times. The current rates of 18.4 cents per gallon of gasoline and 24.4 cents per gallon of diesel went into effect on October 1, 1993.

Until 1982, all receipts from motor fuel taxes were deposited into the HTF. The Surface Transportation Assistance Act of 1982 increased the tax rates from four cents per gallon to nine cents per gallon, established separate Highway Account and Mass Transit Account within the HTF, and deposited one cent out of the nine cents per gallon into the Mass Transit Account.

The Superfund Amendments and Reauthorization Act of 1986 raised the rates by 0.1 cent per gallon to 9.1 cents per gallon of gasoline and 15.1 cents per gallon of diesel, and deposited the revenues generated from that increase into the newly established Leaking Underground Storage Tank Trust Fund. The Omnibus Budget Reconciliation Act of 1990 allowed the increase to lapse on September 30, 1996.

The 1990 budget act also raised the fuel tax rates by five cents per gallon to 14.1 cents per gallon of gasoline and 20.1 cents per gallon of diesel. For the first time, a portion of the taxes, 2.5 cents per gallon, was put into the general fund for deficit reduction. Revenues from that 2.5 cent per gallon tax were restored to the HTF on October 1, 1995.

The Omnibus Budget Reconciliation Act of 1993 raised fuel tax rates by another 4.3 cents per gallon, and deposited all the receipts from that increase into the general fund for deficit reduction. The Taxpayer Relief Act of 1997 redirected the receipts from the 4.3 cents per gallon rate hike back to the HTF (80 percent to the Highway Account, and 20 percent to the Mass Transit Account). The Act also reinstated the lapsed 0.1 cent per gallon fuel taxes for the Leaking Underground Storage Tank Trust Fund.

Currently, of the 18.4 cents per gallon federal excise tax on gasoline, 15.44 cents is deposited into the Highway Account, and 2.86 cents is deposited into the Mass Transit Account. Of the 24.4 cents per gallon federal excise tax on diesel, 21.44 cents is deposited into the Highway Account, and 2.86 cents is deposited into the Mass Transit Account. The latest data show that HTF receipts totaled \$38.8 billion in FY 2006, with \$33.9 billion deposited into the Highway Account, and \$4.9 billion into the Mass Transit Account.

One inherent weakness of the federal fuel excise tax is that it is a unit tax, with its rate tied to a gallon of fuel (gasoline, diesel, or other special fuels) consumed. The disadvantage of a unit tax is that its revenues can only grow if consumption increases. Rising prices of the product by itself does not enhance revenues. On the contrary, when the price of fuel rises beyond a certain point, highway users may constrain their driving and reduce their fuel consumption that, in turn, would depress HTF receipts. Indeed, a recent survey shows that the high prices of fuel last year resulted in reduced driving (as measured by total vehicle-miles driven).

Growth in fuel consumption is also constrained by the changing vehicle fleet on our highways. Notwithstanding the popularity of larger vehicles such as SUVs, the average fuel efficiency of our fleet has been going up slowly. This means that less fuel is consumed, and less tax is paid into the HTF, for the same amount of highway use.

As the number of vehicles in our fleet grows over time, a greater demand is placed on our transportation infrastructure; yet the money that is made available to fund highway expansion and improvements does not increase at the same rate. This creates a mismatch between infrastructure improvements that are needed to meet growing traffic demands and the financial resources that are available to pay for the requisite improvements.

Congress addressed the pressing investment needs by significantly increasing the authorization levels for highway programs in TEA 21 and SAFETEA-LU. Without an increase in receipts, however, the cash balance in the Highway Account of the HTF has fallen steadily. The Highway Account had a balance of \$22.55 billion at the end of FY 2000, but by the time TEA 21 expired at the end of FY 2003, the balance had dropped to \$13 billion. At the end of FY 2006, the balance in the Highway Account had declined further to \$9.2 billion. Current projections show that the cash balance in the Highway Account will be depleted sometime in 2008 or 2009.

D. Funding Structure

The Federal-aid Highway Program is different from almost all other federal programs in that it is funded almost entirely through a type of budget authority known as “contract authority.” Congress originally authorized the use of contract authority for the highway program in the Federal-Aid Highway Act of 1921. Using contract authority, the Secretary of Transportation (Secretary) is able to give states advance notice of the size of the federal-aid program at the time an authorization act is signed into law, and commit to reimburse states for eligible costs they incur for the highway program, without a separate annual appropriation of funds. Contract authority from the HTF has been important to the states since 1921 in eliminating much of the uncertainty inherent in the appropriations process. It enables states to carry out long-term highway construction projects.

With contract authority, funds authorized for the Federal-aid Highway Program for a fiscal year are available for distribution to the states on the first day of that fiscal year via a formula provided in law (apportionment) or based upon congressional mandate or administrative discretion (allocation). Apportionments are made in programs determined in statute, which also specifies eligibility requirements governing the types of projects that may be funded under each program. When a state receives its apportionments, it can obligate amounts against the apportionments for approved projects. Approval of a project by the Secretary constitutes a contract under which the United States agrees to reimburse the state for the federal share of the cost of the project. States actually pay the costs of the project first and then submit vouchers to DOT for reimbursement.

The levels of contract authority for various federal highway programs are established in statute by the surface transportation reauthorization act, currently SAFETEA-LU, according to what the HTF can support through its dedicated stream of funds. The annual obligation ceiling specified in SAFETEA-LU is based on the guaranteed level of funding for each of the fiscal years 2005 through 2009. It limits the amounts the states can obligate (or use) for various highway programs. Annual transportation appropriations legislation confirms or modifies the ceiling set in SAFETEA-LU.

The Appropriations Committee is responsible for providing the cash for the Department of the Treasury to reimburse the states for the federal share of a project’s cost. This is known as liquidating the obligation (federal commitment). In the federal budget system, the cash is known as

outlays. Controlling outlays is difficult when dealing with contract authority because once an obligation is made, the federal government must keep its promise to reimburse the states. The Appropriations Committee therefore exercises its control by limiting obligations to regulate the promises – and subsequent payments – being made. Controlling outlays is further complicated by the fact that states can obligate the contract authority they receive over several years, and they typically obligate the contract authority for a project at different rates in different years. Thus, the way to control outlays is to set a limit on obligations for a fiscal year, regardless of when the funds were apportioned or allocated to the states. Under SAFETEA-LU, the obligation limitation for High Priority Projects, the Appalachian Development Highway System, highway research, and some Equity Bonus can be carried over into later years. Certain programs, such as Emergency Relief, a portion of Equity Bonus, and pre-SAFETEA-LU High Priority Projects, are exempt from the obligation limitation.

Obligation authority is distributed annually to the states in proportion to each state's share of the basic highway programs. On the first day of each fiscal year, each state receives its full apportionment of contract authority for the various highway programs, as well as an amount of obligation authority that traditionally has been less than its apportioned contract authority. As a result, states have been prevented from obligating all of their apportionments. With a few exceptions, each state can use its obligation authority as it chooses among the various highway programs. This flexibility allows the states to focus their investments according to their respective priorities. For example, if the obligation authority a state receives is 90 percent of its contract authority, a state may choose to fully fund its Interstate Maintenance program with its obligation authority while investing at a lower level in its Bridge Replacement and Rehabilitation program. However, the imposition of obligation limits below the level of authorizations over the years has resulted in the states accumulating substantial unobligated balances of contract authority. These are funds that have been apportioned to the states, but which they are prevented from obligating because of the limitations.

One of the most important features established in the Transportation Equity Act for the 21st Century (TEA 21) was to link investment in transportation programs to revenues coming into the federal Highway Trust Fund (HTF). TEA 21 amended the Federal Budget Act to guarantee that federal transportation excise taxes are used for their intended purposes – transportation programs – and that a balance does not build up in the HTF to finance greater spending in other discretionary programs or to mask the budget deficit. TEA 21 established budgetary firewalls to protect investments in these programs from being reduced in order to enable greater spending in other discretionary programs. Highway and transit funding guarantees are enforced in the House by invoking a point of order against any bill that would cause such funding to fall below guaranteed levels. These budgetary firewalls were retained in SAFETEA-LU.

The total amount of guaranteed funding over the life of SAFETEA-LU for highway programs is \$196.8 billion. This total is comprised of two components: (1) the amount within the highway budgetary firewall, and (2) authorizations (contract authority) for programs exempt from the obligation limitation. The firewall amount is tied to projected HTF receipts, and was adjusted annually based on actual revenues to the HTF. This adjustment, called Revenue Aligned Budget Authority (RABA), was \$1.5 billion in FY 2000, \$3.1 billion in FY 2001, and \$4.5 billion in FY 2002. RABA adjustment was zero in FY 2003. There were no RABA adjustments for FY 2004 and FY 2005 because TEA 21 extension acts did not extend RABA for that period. New RABA calculation will be done this fiscal year for FY 2006.

E. Donor-Donee Issue

One of the most contentious aspects of the Federal-aid Highway Program is the amount of money each state receives in apportionments from the HTF compared to the amount of tax highway users in the state pay into the HTF. This is the so-called donor-donee issue.

Redistribution of HTF monies among different regions of the country is built into the federal highway program. This redistribution began as a by-product of the construction of the Interstate System. Large, rural states were unable to generate sufficient fuel tax revenues from in-state highway users to fund roads across the great distances of the state. To establish a rational national network of highways that will support interstate commerce, formulas used to apportion funds must give weight to factors such as the size of a state. In recent years, the apportionments have generated significant controversy as states that have paid more into the HTF over the years than they have received back (the so-called donor states) have argued for greater funding equity.

The Minimum Allocation program was established in the Surface Transportation Assistance Act of 1982 to ensure that each state's percentage of total highway apportionments in a year was at least 85 percent of the percentage of its tax payments into the HTF relative to the distribution of total apportionments to all the states in that year. The percentage return for Minimum Allocation was increased to 90 percent of certain designated funds provided to the states in ISTEA.

TEA 21 replaced the Minimum Allocation program with a similar Minimum Guarantee program, guaranteeing each state a rate of return of 90.5 percent of its relative contribution to the Highway Account of the HTF on certain federal highway programs.

SAFETEA-LU replaced the Minimum Guarantee program with the Equity Bonus program that gradually increases the guaranteed rate of return of each state's relative contribution to the Highway Account of the HTF, on a wider collection of federal highway programs, from 90.5 percent in FY 2005 to 92 percent in FY 2009.

F. Apportionment Programs

SAFETEA-LU strengthened existing core highway apportionment programs, the funding of which is distributed among the states by formulas. Moreover, SAFETEA-LU added three new apportionment programs: the Highway Safety Improvement Program, the Coordinated Border Infrastructure Program, and the Safe Routes to School Program.

1. National Highway System

The National Highway System (NHS) is a 163,000-mile network of Interstate highways, strategic defense routes, principal urban and rural arterials, and connector routes linking arterials and major intermodal transportation facilities. Under certain circumstances, NHS funds may be used for transit improvements in NHS corridors. SAFETEA-LU provided \$30.54 billion for the NHS program for fiscal years 2005 through 2009.

2. Interstate Maintenance

The Interstate Maintenance (IM) Program ensures that the Interstate System is kept in good repair by providing funding for resurfacing, restoring, rehabilitating, and reconstructing the 46,567-mile system. SAFETEA-LU provided \$25.2 billion for the IM program for fiscal years 2005 through 2009.

3. Surface Transportation Program

The Surface Transportation Program (STP) provides flexible funding that may be used by states and localities for projects on any federal-aid highway, including the NHS, bridge projects on any public road, transit capital projects, and intracity and intercity bus terminals and facilities. SAFETEA-LU expanded STP eligibility to include improving intersections that have disproportionately high accident rates or high levels of congestion. It also eliminated the 10 percent set-aside for safety programs. Funding for some of these programs was shifted to a new Highway Safety Improvement Program. In addition, Operation Lifesaver and Railway-Highway Crossing programs were provided with separate authorizations. SAFETEA-LU provided \$32.55 billion for the STP for fiscal years 2005 through 2009.

4. Highway Bridge Replacement and Rehabilitation Program

The Highway Bridge Replacement and Rehabilitation (Bridge) Program targets structurally deficient and functionally obsolete bridges on our highways. It provides funding to improve the condition of our highway bridges through replacement, rehabilitation, and systematic preventive maintenance. SAFETEA-LU eliminated the 35 percent cap on a state's apportionment for the Bridge program that the state can spend to replace, rehabilitate, and perform systematic preventive maintenance on bridges that are not on a federal-aid highway. It provided \$21.6 billion for the Bridge program for fiscal years 2005 through 2009.

5. Congestion Mitigation and Air Quality Improvement Program

The Congestion Mitigation and Air Quality Improvement (CMAQ) Program supports implementation of transportation projects and programs in areas designated as non-attainment areas for ozone, carbon monoxide, or particulate matter under the Clean Air Act, if the projects or programs are effective in reducing air pollution, contributing to the attainment of national ambient air quality standards, or improving traffic flow. SAFETEA-LU broadened CMAQ eligibility to include diesel retrofit for vehicles, PM_{2.5}, and integrated, interoperable communications equipment. It provided \$8.6 billion for the CMAQ program for fiscal years 2005 through 2009.

6. Highway Safety Improvement Program

SAFETEA-LU established the new Highway Safety Improvement Program (HSIP) to emphasize the importance of road safety. The purpose of this program is to significantly reduce traffic fatalities and serious injuries on public roads. Funds provided under the program are apportioned to the states to implement highway safety improvement projects, included in a state's strategic highway safety plan, to correct or improve hazardous road locations and features or to address highway safety problems. SAFETEA-LU provided \$5.06 billion for the HSIP for fiscal years 2006 through 2009.

7. Coordinated Border Infrastructure Program

SAFETEA-LU established the new Coordinated Border Infrastructure (Border) Program to support border states in improving the safe movement of motor vehicles at or across the border between the United States and Canada and the border between the United States and Mexico. Funds provided under the program can be used for improvements to existing transportation infrastructure, construction of highways and safety enforcement facilities in a border region, modifications of regulatory procedures, and enhancement of international coordination of transportation planning and operation to expedite safe and efficient cross-border vehicle and cargo movements. SAFETEA-LU provided \$833 million for the Border program for fiscal years 2005 through 2009.

8. Safe Routes to School Program

SAFETEA-LU established a new Safe Routes to School (SRTS) Program to make walking and bicycling to school safe and more appealing. This program provides funds to facilitate planning, development, and implementation activities of projects that will improve safety, reduce traffic and enable children to walk and bicycle to school. SAFETEA-LU provided \$612 million for the SRTS program for fiscal years 2005 through 2009.

G. Allocated Programs

In addition to apportionment programs, the Federal-aid Highway Program includes allocated programs, whose funding is distributed according to congressional mandate or administrative discretion. SAFETEA-LU established two new major allocated programs: Projects of National and Regional Significance and National Corridor Infrastructure Improvement Program.

1. Federal Lands Highways Program

The Federal Lands Highways Program includes programs for Indian Reservation Roads, Park Roads and Parkways, Refuge Roads, and Public Lands Highways. SAFETEA-LU authorized \$4.47 billion for the Federal Lands Highways Program for fiscal years 2005 through 2009.

2. High Priority Projects

SAFETEA-LU provided funding for high priority transportation projects specifically designated by Congress. Following the practice established under TEA 21, these projects are subject to obligation limitation, but the obligation authority is tied to individual projects designated by Members of the House, and is available until expended.

3. Projects of National and Regional Significance

SAFETEA-LU established the new Projects of National and Regional Significance (PNRS) program to support critical high-cost transportation infrastructure projects that generate very substantial national or regional benefits of improving economic productivity, relieving congestion, and enhancing transportation safety. This program encourages states and localities to invest in broad projects that they may not have otherwise wanted to fund since these projects produce

benefits that spill over to other states, regions, and political jurisdictions. SAFETEA-LU provided \$1.78 billion for the PNRs program for fiscal years 2005 through 2009.

4. National Corridor Infrastructure Improvement Program

SAFETEA-LU established the new National Corridor Infrastructure Improvement (Corridor) Program in recognition of the importance of international or interregional trade to economic growth. Highway corridors, often extending through several states, are the backbone of our national transportation system that facilitates trade. As trade volume increases, existing corridors need to be improved and new corridors need to be developed. The Corridor program is intended to support projects that link segments of existing Interstate highways, facilitate multi-state or regional mobility and promote economic growth, and relieve trade-induced congestion in truck traffic. SAFETEA-LU provided \$1.95 billion for the Corridor program for fiscal years 2005 through 2009.

H. Other Significant SAFETEA-LU Provisions

In addition to reauthorizing existing highway programs and establishing new highway programs to address pressing surface transportation problems facing the nation, SAFETEA-LU modified a number of statutory provisions to help strengthen the Federal-aid Highway Program.

1. Protect Human Health and the Environment

SAFETEA-LU broadened the range of eligible activities under the CMAQ program to include projects that are designed to address air pollution problems caused by PM_{2.5}. Previously, only particulates of a larger size – PM₁₀ – were included in program eligibility. This finer particulate matter has been found to cause more serious respiratory problems. Transportation projects funded under the CMAQ program will help protect human health by controlling pollution problems caused by the fine particulate matter, PM_{2.5}, in addition to the coarser particulate matter, PM₁₀, carbon monoxide, and ozone.

SAFETEA-LU established the new Safe Routes to School Program to encourage children to walk or bicycle to school. By helping to develop a healthy lifestyle at an early age, this program will contribute positively to addressing the serious problem of childhood obesity caused by a sedentary lifestyle that is so prevalent among our young children today.

SAFETEA-LU also expanded the use of Federal Lands Highways Program funds to improve pedestrian walkways and bicycle transportation facilities in national parks, national forests, national wildlife refuges, and on Indian reservations.

2. Promote Private Investment in Transportation Infrastructure

SAFETEA-LU provided strong incentives for the private sector to participate in transportation infrastructure development. Foremost among these incentives is the authorization of \$15 billion in private activity bonds for highways and freight transfer facilities. This change in the Internal Revenue Code would stimulate private investment in transportation projects by allowing them to be financed with tax-exempt bonds.

SAFETEA-LU also authorized a new Express Lanes Demonstration Program to allow the collection of tolls to finance up to 15 projects, which involve the construction of new lanes on a non-tolled facility or the modification of existing lanes on a tolled facility on the Interstate System, to help ease congestion and reduce emissions in a non-attainment area.

Finally, SAFETEA-LU established a new 10-year Interstate System Construction Toll Pilot Program to allow the collection of tolls to finance up to three Interstate construction projects, if such financing arrangement is the most efficient and economical way to advance the projects. This pilot program prohibits the inclusion in the agreement between a state and its private partner a non-compete clause that would prevent the state from improving or expanding the capacity of adjacent public roads to deal with excessive congestion, additional pavement wear, and elevated incidence of traffic accidents, injuries, and fatalities resulting from traffic diversion from the tolled facility.

3. Expedite Project Delivery

SAFETEA-LU established a new environmental review process for highways, transit, and intermodal projects. This process is designed to bring all the relevant interested parties into the process early so that their concerns will be considered adequately throughout the review. The process applies to projects being advanced with environmental impact statements, and can be applied, at the discretion of the Secretary, to projects being advanced with other environmental documents. As the lead agency, DOT is responsible for defining the project's purpose and need, after public comments and interagency participation. DOT is also responsible for developing a range of alternatives to be considered for the project. There is a 180-day statute of limitations for legal challenges to federal agency approval.

In addition, SAFETEA-LU authorized a new Surface Transportation Project Delivery Pilot Program to allow up to five states to assume all environmental responsibilities of the Secretary under the National Environmental Policy Act and other environmental laws, except for conformity determination under the Clean Air Act and transportation planning requirements. SAFETEA-LU also established a pilot program to allow up to five states to assume all environmental responsibilities for recreation trails and transportation enhancement projects.

I. Activities in the 109th Congress

The most significant action of the Subcommittee in the 109th Congress was the passage of the long-term reauthorization of the federal surface transportation programs. Although the House passed H.R. 3550, the Transportation Equity Act: A Legacy for Users (TEA-LU) in 2004, Congress was unable to complete action to reauthorize those programs for fiscal years 2004 through 2009 prior to adjournment of the 108th Congress. The authority to continue those programs was provided by a series of short-term extensions. The reauthorization bill was reintroduced as H.R. 3 at the beginning of the 109th Congress. It passed the House on March 10, 2005. The House and Senate agreed to a conference report on July 29, 2005. The President signed SAFETEA-LU into law on August 10, 2005.

Subcommittee activities in 2006 focused on investigation of emerging issues and oversight of implementation of surface transportation programs pursuant to SAFETEA-LU. Hearings were held on the President's budget and its impact on SAFETEA-LU, highway capacity and freight mobility,

long-term lease of existing transportation facilities to private entities, and intermodal approach to solving transportation problems.

The Subcommittee in 2006 also celebrated the 50th anniversary of the Dwight D. Eisenhower National System of Interstate and Defense Highways.

IV. FEDERAL TRANSIT PROGRAM

A. Overview and Funding

Federal funding for the nation's public transportation systems dates back to 1964 with the enactment of the Urban Mass Transportation Act. The measure provided \$375 million in capital assistance over three years. This law set the stage for the current program of financial assistance for mass transportation managed and run by the Federal Transit Administration (FTA).

The system of federal funding for transit was dramatically changed in 1991 with the passage of the Intermodal Surface Transportation Equity Act (ISTEA). The Transportation Equity Act for the 21st Century (TEA 21) further reauthorized surface transportation programs for five years, from 1998 to 2003. From October, 2003 through August, 2005 federal transit and highway programs were authorized through 12 short-term extensions of TEA 21.

FTA programs are currently authorized by SAFETEA-LU for fiscal years 2005 through 2009. This legislation provides the highest levels of federal transit investment in history: \$52.6 billion over five years, an increase of 46 percent over the funds guaranteed under the TEA 21 bill.

Transit programs are primarily funded from revenues in the Mass Transit Account (MTA) of the Highway Trust Fund, but a portion of the funding comes from general Treasury revenues, known as the General Fund. Currently, of the 18.4 cents per gallon federal excise tax on gasoline, 2.86 cents is deposited into the MTA to fund transit programs. All of the transit funds authorized by SAFETEA-LU are guaranteed to be appropriated in the year for and the level at which they are authorized. Since the passage of TEA 21, funds for transit programs have been protected by a budgetary firewall. The FY 2006 appropriations process funded transit programs consistent with SAFETEA-LU authorized levels, or \$8.5 billion.

B. Grant Program Structure

SAFETEA-LU generally followed the principles for the transit program set out under TEA 21 but made a number of changes and improvements. In addition to adding several new programs, SAFETEA-LU changed the categorization, and funding streams, of several programs. Under TEA 21, programs were categorized as Formula Programs, Capital Investment Programs, Planning Programs, and Research Programs. Some programs, such as Job Access and Reverse Commute (JARC), were treated separately and not included in any category. All Formula Programs were either distributed by formulas or were takedowns from one of the Formula Programs. Capital Investment Programs included all programs codified under 49 USC 5309.

Under TEA 21, programs received a mix of funding from the MTA and from the General Fund. SAFETEA-LU, beginning in FY 2006, changes this structure and instead funds each

program exclusively from either the MTA or the General Fund, eliminating any mix of funding sources within one grant program. To complement this change, SAFETEA-LU changed the classification of many programs within the FTA structure. Formula programs, previously independent programs, and some capital programs are now categorized as Formula and Bus Grant Programs. All of these programs are funded entirely out of the Mass Transit Account. These programs include the following, listed by Section of Title 49 of the United States Code:

- Metropolitan and Statewide Planning Programs (Section 5305)
- Urbanized Area Formula Grants (Section 5307)
- Clean Fuels Grants (Section 5308)
- Bus and Bus Facility Grants (Section 5309)
- Formula Program for Elderly Persons and Persons with Disabilities (Section 5310)
- Other Than Urbanized Area Formula Program (Section 5311)
- Job Access and Reverse Commute (Section 5316)
- New Freedom Program (Section 5317)
- Alternative Transportation in Parks and Public Lands (Section 5320)

In addition to these programs, FTA continues to provide capital investment grant funding through the New Starts Program, codified as Section 5309(m)(2)(A), as well as several transit research programs. The details of these grant programs are described below.

FTA grants are provided to designated recipients, who include publicly owned operators of transit systems, local officials, State Governors, and Indian Tribes. The majority of grants are for capital purchases, although Federal operating assistance grants are also available for areas with lower-density populations where transit systems cannot cover the cost of operations.

In order to obtain federal transit funds a government agency or designee must submit a grant application to the FTA. When the grant is approved the funds are obligated, the agency proceeds with its procurement process or receives reimbursement for expenditures that have already been made. Federal funds pay for a portion, or the federal share, of a project's costs. State or local funds, termed matching funds, must also be expended on a project. Capital grants are provided with a federal share up to 80 percent (except for incremental costs of vehicle-related equipment needed to meet the requirements of the Clean Air Act and the Americans with Disabilities Act and for bicycle projects, which are at a 90 percent Federal share). Operating assistance is provided at a 50 percent Federal share.

C. Formula Programs

1. Urbanized Area Formula Grants

The Section 5307 Urbanized Area Formula Grant is funded from the Mass Transit Account of the Highway Trust Fund. SAFETEA-LU authorized this program at \$20.2 billion over five years.

There are currently more than 400 "urbanized areas" nationwide as determined by the Census. An urbanized area is defined as containing greater than 50,000 people. Formula funds are distributed to transit systems in those areas based on a number of factors, including population,

vehicle miles traveled, and transit ridership. Formula funds may be used for capital expenses, such as the purchase of new buses or trains, or for capital replacement, such as rehabilitation and refurbishment of existing transit systems, in order to ensure that customers continue to receive safe and reliable public transportation. The Urbanized Area Formula program also includes funding for the Growing States and the High Density States programs, which distribute funds to both the Urbanized and Non-urbanized Area Formula programs.

In addition, SAFETEA-LU continues the policy set out in TEA 21 that allows transit agencies in urbanized areas with populations of less than 200,000 to use their formula funds for operating assistance. In order to ease the transition for transit systems in communities whose population rose above 200,000 as a result of the 2000 Census, the bill allows these systems to continue to use formula funds for operating expenses in FY 2006 at 50% of their current limits, and 25% in FY 2007.

Under TEA 21, Section 5307 grantees in areas with populations of more than 200,000 were required to spend one percent of their urbanized area formula funds for transit enhancements projects, such as bus shelters, bike racks, and pedestrian walkways. SAFETEA-LU eliminated this set aside and transit enhancements are now evaluated as part of the grantee certification process.

2. Other than Urbanized Areas (Rural) Formula Program

The Other than Urbanized Area formula program was authorized at \$1.95 billion through 2009. Codified at 49 U.S.C. §5311, this formula grant program provides assistance to public transit projects in rural and small urban areas (defined as areas of less than 50,000 in population).

Under TEA-21, grants were passed to States to distribute funds based on applications received from local areas that met the population criteria. SAFETEA-LU instituted a new requirement that 20 percent of Section 5311 funds be distributed through a new formula based on land area. The remaining 80 percent of funds are allocated under the process established under TEA 21. A State must use 15 percent of its Section 5311 funding for intercity bus service projects unless the Governor certifies that all intercity bus needs have been met. Grants may be used for both capital and operating expenses. SAFETEA-LU also amended the Rural Transit Assistance Program (RTAP) to provide a two percent set-aside out of Section 5311 funds to fund RTAP, rather than from the research program as under TEA 21.

Within this program, SAFETEA-LU created a new set-aside, before allocation of funds to States, to provide public transportation on Indian reservations. This program, Public Transportation on Indian Reservations, provides funds for direct grants to Indian Tribes. SAFETEA-LU does not prescribe allocations of this funding to specific Tribes, and does not set out the terms and conditions for awarding grants. These conditions and the grant process will be determined by rulemaking after outreach to stakeholders. The program is authorized at \$45 million over five years.

3. Elderly and Disabled Program

This formula program, codified in Section 5310, provides Federal assistance for the capital costs of providing transportation services for the elderly and disabled population. The program is funded out of the Mass Transit Account, and was reauthorized under SAFETEA-LU at \$584 million

over five years. Funds are distributed to States and may be used to assist nonprofit groups in meeting the transportation needs of the elderly and persons with disabilities. Under SAFETEA-LU, a new seven state pilot program was established for fiscal years 2006 through 2009 to assess whether expanding eligibility to include operating assistance would improve services. The provision also allows the non-federal share of funds to include amounts available for transportation from other federal agencies including the Federal Lands Highway Program.

4. Job Access Reverse Commute (JARC)

TEA 21 created the Job Access and Reverse Commute program to develop transportation services to move welfare recipients and low-income individuals to and from jobs, and to develop transportation services to help residents of urban, rural, and suburban areas to reach suburban employment opportunities. The program funds transit service for workers with non-traditional work schedules.

The JARC program was reauthorized under SAFETEA-LU at a level of \$727 million for the program through 2009. Under TEA 21, JARC was a discretionary program. SAFETEA-LU changed the program by creating a formula under which each state will receive a portion of JARC funds based on the number of low-income and welfare recipients in each area. The program is now codified in Section 5316 of Title 49 and the program is entirely funded from the MTA.

5. New Freedom Program

SAFETEA-LU created a new formula program, known as the New Freedom Program, to encourage service and facility improvements to address the transportation needs of persons with disabilities that exceed the requirements set forth in the Americans with Disabilities Act (ADA). Funding under this new program will be allocated through a formula based on the number of persons with disabilities. Grantees are to be selected competitively by States or other designated funding recipients. The New Freedom program is authorized at \$339 million through 2009.

6. Transit in the Parks Program

The transit title of SAFETEA-LU also established a new Alternative Transportation in the Parks and Public Lands Program (Transit in the Parks) to provide grants for planning or capital projects in or near federally-owned or managed park, refuge, or recreational areas that are open to the public. The new program aims to fund transportation in the national parks, while conserving natural, historical, and cultural resources; reducing congestion and pollution; improving visitor mobility and accessibility; enhancing the experience of visitors; and ensuring access to all. The program is authorized at \$97 million over four years and funds are to be allocated based on a review of an annual program of projects.

7. Clean Fuels Grant Program

TEA 21 established a new clean fuels formula grant program to provide an opportunity to accelerate the introduction of advanced bus propulsion technologies into the mainstream of the Nation's transit fleets. A takedown of \$250 million from formula grants was authorized for this program to fund such projects as the purchase or lease of clean fuel buses, and to improve existing facilities to accommodate clean fuel buses. All funding for this program authorized under TEA 21

was transferred in the appropriations process to the Section 5309 program. SAFETEA-LU continues this grant program to provide capital grants for clean fuel buses and related facilities and authorizes \$188 million for FY 2006 through FY 2009 for this purpose. Up to 25 percent of the funds may be used for “clean diesel” buses.

D. Capital Investment Grants

FTA’s Capital Investment Program, codified under Section 5309, provides grants for large projects that cannot be funded from a transit agency’s formula allotment. SAFETEA-LU amended this program to provide funding primarily for Major Fixed Guideway Investment Projects (New Starts) and Capital Investment Grants of \$75 million or less per project (Small Starts). These Capital Investment programs will be funded entirely out of the General Fund from FY 2006 through 2009. The Bus and Bus Facility Program was a subset of the Capital Investment Program under TEA 21 and received 20 percent of the overall Capital Investment Program’s funds. Pursuant to the changes in SAFETEA-LU, the Bus and Bus Facility program will be funded from the Formula and Bus Grants beginning in FY 2006.

1. New Starts and Small Starts

The New Starts Program provides funding for are projects for new fixed guideway systems and extensions to existing fixed guideway systems, including the acquisition of rolling stock. As set out in TEA 21, projects must be based on the results of alternatives analysis and preliminary engineering, they must be justified based on mobility improvement, environmental benefit, cost effectiveness, and operating efficiency. Projects must also be supported by an acceptable degree of local financial commitment. SAFETEA-LU added several new program features, including a higher federal match for projects whose cost and ridership estimates are within 10 percent of original projections. The New Starts program is authorized at \$7.4 billion over five years.

SAFETEA-LU also establishes a new grant program for “Small Starts” within the New Starts program. Small Starts are defined as grants of less than \$75 million for capital costs associated with new fixed guideway systems, extensions, and bus corridor improvements. The total project cost of any Small Start cannot exceed \$250 million. Small Starts are separately authorized at \$200 million beginning in FY 2007 and will be subject to streamlined grant application criteria and an expedited approval process. The Administration’s budget request for FY 2007 included a \$100 million reduction in funding to the Small Starts program from the authorized level of \$200 million. The FTA has provided the rationale to the Committee that the program requirements will not be finalized and FTA will not distribute funds to applicants until the summer of 2007; therefore the agency only requested half of the authorized amount for FY 2007.

2. Bus and Bus Facility Grants

Eligible projects under this grant program include the acquisition, construction, and improvement of buses and bus-related facilities. Funds within this program are allocated to specific programs as set out by statute. This includes \$10 million per year for ferry boats and terminals, a Fuel Cell Bus program, and \$35 million for intermodal transportation terminals, including the intercity bus portion of those terminals. The Bus and Bus Facilities Grant program is authorized at \$4.2 billion over the duration of the SAFTEA-LU bill.

E. Research and Planning Programs

1. Metropolitan and Statewide Planning Programs

SAFETEA-LU consolidates metropolitan planning, statewide planning, and other planning programs under this single account funded by the Mass Transit Account. These programs are authorized at \$487 million over five years, and they provide planning funds for Metropolitan Planning Organizations (MPOs) and State Departments of Transportation to help meet the planning requirements of 49 USC 5303, 5304, and 5305.

2. Research Programs

SAFETEA-LU reauthorized several transit research programs, authorizing a total of \$309 million over five years. The research funding is divided between National Research Programs, the Rural Transportation Assistance Program, Transit Cooperative Research, the National Transit Institute, and the University Centers Program.

F. Activities in the 109th Congress

As discussed in the Federal-Aid Highway section above, the Subcommittee's most significant legislative action in the 109th Congress was the passage of the long-term reauthorization of federal surface transportation programs, including transit. The Committee passed six short-term extension bills in the 109th Congress to prevent the authorization of surface transportation programs from lapsing while a final Conference Report was negotiated. The President signed SAFETEA-LU into law on August 10, 2005.

The Committee on also passed two SAFETEA-LU technical corrections bills to make changes of a conforming nature and to correct drafting errors, as well as to correct a shortfall in funding to the Federal Highway research program. H.R. 5689 passed the House on June 28, 2006. The House also passed H.R. 6233 on September 29, 2006, which included all of the language from H.R. 5689 and added provisions requested by the Senate Committee on Environment and Public Works and Banking, Housing, and Urban Affairs. There was no subsequent Senate action on either of these bills.

The Committee also marked up H.R. 5808, The Public Transportation Security Assistance Act of 2006, on September 15, 2006. This legislation authorizes the Secretary of Transportation to award grants to public transportation systems and intercity bus operators to improve security. H.R. 5808 authorizes \$3.4 billion in grant funds for FY 2007 through 2009.

In addition, the Subcommittee held a number of hearings on issues related to public transportation. Two hearings were held, on October 20, 2006 and October 27, 2006, on the progress of the repair, restoration, and replacement of highway and transit infrastructure and services along the Gulf Coast after the devastation caused by Hurricane Katrina. The first hearing included Federal agency witnesses, and the second brought in State and local officials to provide a complete perspective of the recovery effort.

The Subcommittee examined transit safety and security issues as well. On March 29, 2006, the Subcommittee held a hearing on transit and over-the-road bus security to examine issues including the roles and responsibilities of FTA and the Department of Homeland Security, the state of preparedness in the transit industry, and Federal programs that help the nation's public transit systems to mitigate against security threats. In addition, a July 29, 2006 Subcommittee oversight hearing examined the effectiveness and management of the FTA's State Safety Oversight program, which governs the safety of rail transit systems.

V. MOTOR CARRIER REGULATORY FUNCTIONS

The Subcommittee has jurisdiction over all aspects of motor carrier safety and motor carrier economic regulation. In December 1999, the President signed H.R. 3419, the Motor Carrier Safety Improvement Act (MCSIA), into law. The act established a new agency within DOT, the Federal Motor Carrier Safety Administration (FMCSA). Prior to 2000, motor carrier safety oversight was housed in the Federal Highway Administration, where this function had to compete with large Federal infrastructure programs for attention. With the establishment of FMCSA, truck and bus safety have the same status within the Department as aviation safety, railroad safety, pipeline safety, and maritime safety.

The FMCSA's mission is to improve safety on our nation's highways by reducing the number and severity of crashes involving large trucks. The agency pursues this goal through increased commercial motor vehicle inspections and motor carrier compliance reviews, stronger enforcement measures against violators, expedited completion of rulemakings, scientifically sound research, and commercial driver's license testing, record-keeping and sanctions. SAFETEA-LU reauthorized federal motor carrier safety programs through FY 2009.

A. Motor Carrier Safety

FMCSA administers the motor carrier safety assistance grant program, regulates the size and weight of vehicles traveling over the Interstate Highways, and establishes regulations related to Commercial Drivers Licenses, equipment and driver operations, drug and alcohol testing, and vehicle registration requirements. In general, most motor carrier safety regulations are set by DOT in administrative rulemaking procedures.

1. Motor Carrier Safety Assistance Grant Program

SAFETEA-LU reauthorized the Motor Carrier Safety Assistance Program (MCSAP) for State enforcement of Federal truck and bus safety requirements or comparable State safety requirements. MCSAP funds are used for roadside inspections, traffic enforcement, compliance reviews, outreach, and education, and other similar activities.

In order to receive a full grant under the MCSAP program, a State must conform its motor carrier safety laws and regulations to federal requirements—within a reasonable “zone of tolerance.” If a State's laws and regulations are not in conformity, DOT may withhold a portion of that State's MCSAP funding.

2. Truck Size and Weight

Federal law governs the overall size and weight of trucks operating on the Interstate System. Trucks are limited on the Interstate System to a gross vehicle weight of 80,000 pounds overall, with a single-axle limit of 20,000 pounds. States may allow higher weights without a special permit if they had previously done so in 1956, when the Interstate System was created. Special permits may be issued to carry weights greater than these limits.

Overall truck length limits are regulated by the States, although pursuant to Federal law, States cannot prohibit trailers on the National Truck Network (which includes the Interstate and other specific designated roads) less than 48 feet in length. In practice, almost every State permits a 53-foot single trailer length and some permit longer lengths. There are Federal limits on the operation of longer combination vehicles (LCVs) -- which are two ("doubles" of certain configuration) or three ("triples") smaller trailers that are towed by one cab. Current law limits the operation of double and triple trailer combinations with gross vehicle weights in excess of 80,000 pounds to the States in which they were operating on June 1, 1991, and prohibits the expansion of routes or the removal of operating restrictions after that date.

3. Commercial Driver's License Program

Congress established the Commercial Driver's License (CDL) requirement under the Commercial Motor Vehicle Safety Act of 1986. The Act was designed to remove unsafe and unqualified commercial drivers from the nation's highways by making it illegal for such drivers to have more than one license. The CDL requirement covers drivers of vehicles weighing more than 26,000 pounds, haulers of hazardous materials requiring placarding, and drivers transporting 15 or more passengers.

In addition, drivers must notify employers of moving violations; employers cannot allow drivers with suspended licenses to operate vehicles; and drivers and employers face severe penalties for CDL violations. FMCSA keeps an electronic CDL clearinghouse for driver information to enforce these limitations.

4. Equipment and Driver Operations

The Federal motor carrier regulations govern numerous types of equipment and overall driver eligibility requirements. With respect to driver regulations, DOT regulations govern driver hours of service, which set limits on the number of hours that a driver may operate: generally no more than 11 hours of actual driving, 14 hours on duty, followed by 10 hours at rest. In addition, drivers may not be on duty more than a total of 77 hours in any seven consecutive day period or 88 hours in any eight consecutive day period. A number of narrow exemptions have been provided to certain industries.

5. Drug and Alcohol Testing Requirements

The Omnibus Transportation Employee Testing Act of 1991 requires drug and alcohol testing of safety-sensitive employees in the aviation, motor carrier, railroad and transit industries. DOT issued rules mandating anti-drug and alcohol misuse prevention programs in February, 1994.

These rules became partially effective on January 1, 1995, for large employers (generally 50 or more safety-sensitive employees) and January 1, 1996, for smaller employers.

The rules define a violation as a blood alcohol concentration of more than 0.04, or using alcohol on the job or working within four hours of consuming alcohol. Employee testing is required pre-employment (drug only); post-accident for employees involved in accidents when there is reasonable suspicion of drug or alcohol use; on a random basis; upon return to duty; and on follow-up basis after a violation. Samples are tested for marijuana, cocaine, amphetamines, opiates, and PCP.

B. Economic Regulation

Most Federal economic regulation of the trucking industry was ended in 1980. Federal economic regulation of the intercity bus industry was ended in 1982. On January 1, 1996, the Interstate Commerce Commission (ICC), which had primary jurisdiction over the economic regulation of the motor carrier industry, was terminated, some functions were eliminated, and remaining responsibilities were transferred to either the Office of Motor Carriers at DOT or to the newly created Surface Transportation Board, an independent agency within DOT. These last changes came about as a result of the ICC Termination Act of 1995.

As of January 1, 1995, States were no longer able to regulate the prices, routes and services provided by motor carriers of property in intrastate commerce. States are not preempted from regulating safety, financial fitness, insurance, vehicle size and weight and hazardous materials routings. Household goods movers are not covered by the provision and can still be regulated at a State level. States are also permitted to continue to regulate in the specified areas of: (1) uniform cargo liability rules; (2) uniform bills of lading; (3) uniform cargo credit rules; and (4) continued limited antitrust immunity for interlining and mileage guides. Carriers are given the option to be subject to regulation in those four areas at their election.

C. NAFTA

The North American Free Trade Agreement (NAFTA), signed on December 17, 1992, is a trilateral economic agreement among Canada, Mexico, and the United States. The objective of NAFTA is to phase out barriers to trade in goods and services in North America, eliminate barriers to investment, and strengthen the protection of intellectual property rights. Since trucking is the principal means of commercial transportation between the countries, NAFTA includes a number of provisions that impact current cross-border truck and bus operations. NAFTA governs access to U.S. and Mexican markets and allows investment in U.S. and Mexican companies with certain phase-in periods and schedules. Under the NAFTA implementation schedule, by 2000 all restrictions on cross-border trucking were to be lifted. However, in 1995, then-DOT Secretary Federico Pena indefinitely delayed border state access for foreign motor carriers, citing safety and security reasons. Border State access for regular route bus service, which was to have taken effect on January 1, 1997, was also postponed.

The Bush Administration is committed to implementing the NAFTA cross-border trucking provisions and opening the U.S.-Mexico border to international trucking and cross-border regular route bus service. Because of continuing concerns about the safety of some Mexican trucks and inconsistencies between U.S. and Mexican commercial vehicle operational standards, the fiscal year

2002 Transportation Appropriations Act (P.L. 107-87) included a provision that prohibited FMCSA from using funds to process applications from Mexican motor carriers before certification by the DOT Inspector General that specific safety-related requirements had been met. That appropriations provision has been enacted in every subsequent transportation appropriations bill since 2002.

On November 27, 2002, the DOT announced that all conditions contained in the provision had been met, and FMCSA was directed to act on the applications received thus far from Mexico-domiciled truck and bus companies seeking to transport international cargo across the U.S.-Mexico border or to provide regular route services between Mexico and the United States. However, in February 2003, the 9th U.S. Circuit Court ruled that the entry of Mexican trucks was to be delayed pending a full environmental impact statement and Clean Air Act analysis of the new commercial vehicle traffic resulting from opening the border. In June 2004, this ruling was overturned by the U.S. Supreme Court, clearing the way for the border to be opened to Mexican trucks and buses for long-haul service. However, an additional provision in the FY 2002 Appropriations Act requires that 50 percent of FMCSA's safety compliance reviews of Mexican carriers be performed on-site in Mexico.

This issue is still being negotiated with the Mexican government and the full implementation of NAFTA requirements regarding international commercial vehicle traffic cannot be realized until it is resolved. There are currently 678 pending applications from Mexican truck and bus companies being reviewed by the FMCSA. However, DOT announced in the fall of 2006 a plan to initiate a pilot program that would grant up to 100 Mexico-domiciled motor carrier operating authority outside of the border zone. DOT had not initiated the program as of January 2007.

D. Activities in the 109th Congress

As discussed above, the Subcommittee's primary legislative focus in the 109th Congress was to report the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU).

The Subcommittee held several hearings on topics related to motor carrier safety in the 109th Congress, including a hearing on May 11, 2005 to review the background check process for truck drivers who apply for a hazardous material endorsement. On March 2, 2006, the Subcommittee examined a segment of the bus industry known as curbside operators and their compliance with federal motor carrier safety regulations.

VI. HIGHWAY SAFETY

Highway safety programs are administered primarily by the National Highway Traffic Safety Administration (NHTSA) and funded through the Highway Trust Fund. NHTSA is tasked with reducing vehicle-related crashes, saving lives, and preventing injuries along the nation's roadways. With over 43,000 people dying along our roads each year, the funding provided for safety programs is critical. A total of \$3.4 billion is authorized for five years under SAFETEA-LU. Major safety programs include:

A. Highway Safety Programs (23 USC 403)

This section requires states to have safety plans approved by the Secretary and designed to reduce fatalities, injuries, and property damage resulting from traffic accidents. SAFETEA-LU requires that states support national safety goals, including national law enforcement mobilizations, sustained enforcement of statutes addressing impaired driving, occupant protection, speeding, annual safety belt use surveys, and development of timely and effective statewide data systems. This program is funded by SAFETEA-LU at \$1 billion over fiscal years 2005 through 2009, and funds are apportioned through a formula. SAFETEA-LU increases minimum apportionments for the states and for Indian tribes beginning in fiscal year 2006.

B. Highway Safety Research and Development (23 USC 403)

A total of \$502.4 million was authorized over fiscal years 2005 through 2009 under SAFETEA-LU for the Secretary to conduct research on all phases of highway safety and traffic conditions, driver behavior, fatigued driving and distracted driving, training or education programs, traffic safety countermeasures, older drivers, demonstration projects, and motorcycle safety. NHTSA is also authorized to participate in international activities to enhance highway safety.

C. Occupant Protection Incentive Grants (23 USC 405)

This program, created under TEA-21, allows the Secretary to make grants to states that use programs or laws to increase the use of occupant protection devices. A state may become eligible by meeting four of six criteria, including primary seat belt laws, minimum fines or penalty points for seat belt violations, special traffic enforcement programs, and child passenger protection education programs and laws. SAFETEA-LU amends this program by making it possible for a state to receive a grant of up to 100 percent of the amount apportioned to the state for fiscal year 2003 under Section 402. SAFETEA-LU authorizes a total of \$119.8 million from fiscal year 2005 through 2009. Grant funds must be used to implement and enforce occupant protection programs.

D. Safety Belt Performance Grants (23 USC 406)

This program provides grants to states to promote the passage and enforcement of seat belt laws. This program, funded at \$498 million for fiscal years 2006 through 2009, replaces the Safety Incentive Grants for Use of Seat Belts program (23 USC 157). SAFETEA-LU funds the prior program at \$112.0 million for fiscal year 2005. States that did not have a primary seat belt law enacted on December 31, 2002 may become eligible for such grants in two ways: by enacting and enforcing a primary seat belt law for all passenger motor vehicles; or by achieving a seat belt usage rate of 85 percent for two consecutive calendar years. Eligible states will receive a one time grant equal to 475 percent of that state's apportionment under Section 402 for fiscal year 2003. If any money remains on July 1st of each year, after all eligible states have been awarded grants, then states that had primary seat belt laws in place before January 1, 2003 will become eligible for a one time grant equal to 200 percent of the funds apportioned to the state under Section 402 for fiscal year 2003. Grants may be used for projects that correct or improve a hazardous roadway condition or proactively address highway safety problems.

E. State Traffic Safety Information System Improvements (23 USC 408)

This program, created under SAFETEA-LU, provides grants for states to improve the timeliness, accuracy, completeness, uniformity, integration and accessibility of state safety data, to

link this data with other data systems in the state, and to improve the compatibility and interoperability of this data with national data and systems. SAFETEA-LU authorizes \$138 million over fiscal years 2006 through 2009. Funds must be used to implement data improvement programs. To become eligible for a first-year grant, a state must meet a number of criteria including having a multi-year safety data coordinating committee and a strategic plan approved by this Committee. To receive grants in subsequent years, states must meet additional criteria, including demonstrating progress toward achieving the goals set by the strategic plan.

F. Alcohol-Impaired Driving Countermeasures (Section 23 USC 410)

This program, funded at \$555 million for fiscal years 2005 through 2009, provides grants to states for a number of measures to reduce the prevalence of alcohol-impaired driving. States can receive grants by having a low alcohol-related fatality rate, or by meeting a number of criteria: at least three of eight criteria for fiscal year 2006 grants; at least four of eight criteria for fiscal year 2007 grants; and at least five of eight criteria for grants in fiscal years 2008 and 2009. Criteria include check point or saturation patrol programs, prosecution and adjudication outreach programs, testing of blood alcohol content, high risk driver penalties, alcohol rehabilitation programs and driving while intoxicated (DWI) courts, underage drinking programs, administrative license revocation, and a self-sustaining impaired driving prevention program. Programs for alcohol rehabilitation and DWI courts are a new criteria added by SAFETEA-LU. States can also become eligible for such grants by having a high alcohol-related fatality rate. Grants may go to fund any of the programs listed as criteria for eligibility, and also for law enforcement or public awareness campaigns that address the problem of alcohol-impaired driving.

G. National Driver Register (49 USC 303)

States can participate in the National Driver Register, under which the Secretary collects information about individuals who have been denied a motor vehicle operating license, who have suspended or canceled licenses, and those who are convicted for a number of crimes including driving under the influence, a traffic violation that resulted in a fatality, or reckless driving. SAFETEA-LU authorizes \$20 million for this program for fiscal years 2005 through 2009.

H. High Visibility Enforcement Program

SAFETEA-LU funds this program at \$116 million from fiscal year 2006 through fiscal year 2009. Under this program, funds will be used to conduct at least two high-visibility safety law enforcement campaigns each year. The campaigns will address two issues: alcohol-impaired or drug-impaired driving and seat belt usage. Funds may also be used for advertising and for an annual evaluation to determine the effectiveness of the campaigns. Consideration will be given to advertising for non-English speaking populations. The Administrator of NHTSA will coordinate with states to carry out these campaigns.

I. Motorcyclist Safety

Under this new program, states will receive grants to help reduce the number of motorcycle crashes. States become eligible for such grants by adopting or demonstrating a number of measures, including motorcycle rider training courses and awareness programs, a reduction of crashes and fatalities involving motorcyclists and impaired motorcyclists, and an impaired driving program.

Eligible uses of funds include motorcyclist safety training and awareness programs. SAFETEA-LU funds this program at \$25 million over fiscal years 2006 through 2009.

J. Child Safety and Child Booster Seat Incentive Grants

SAFETEA-LU establishes this program to provide incentives for states to pass and enforce laws requiring children to be secured in proper safety restraints. This program is funded at \$25 million for fiscal years 2006 through 2009. Eligible uses of funds include enforcement of child restraint laws, training for child passenger safety officials, and public education efforts.

K. Safety Incentives to Prevent Operation of Motor Vehicles by Intoxicated Persons (23 USC 163)

SAFETEA-LU codifies the penalty against states for not enacting and enforcing a drunk driving law with a legal limit of a blood alcohol concentration level of 0.08. This penalty was initially enacted in the Department of Transportation and Related Agencies Appropriations Act of 2001. This section also provides \$110 million in fiscal year 2005 for grants to states that enact 0.08 drunk driving laws.

L. Activities in the 109th Congress

In addition to the highway safety programs included in SAFETEA-LU, the House passed a concurrent resolution regarding safety issues for the visually impaired. House Concurrent Resolution 235 expresses the sense of Congress that States should require candidates for a driver's license to demonstrate an ability to exercise greatly increased caution when driving in the proximity of potentially visually impaired individuals.

VII. RESEARCH

In order for America to have a strong infrastructure system it is necessary to invest in research, technology transfer, and the development of the transportation work force. Like TEA-21 before it, SAFETEA-LU continues the strong commitment to research, providing over \$2 billion over the life of the bill. The Research and Innovative Technology Administration (RITA), created under the Norman Y. Mineta Research and Special Programs Improvement Act, is tasked with coordinating the research conducted by the Department of Transportation. Money spent on research and technology today will result in a safer and more efficient infrastructure system in the future. Major research programs include:

A. Surface Transportation Research, Development, and Deployment Program (23 USC 502, 503, 506, 507, 509, 510)

SAFETEA-LU authorizes \$982 million for general surface transportation research, development, and deployment for fiscal years 2005 through 2009. Programs under this section include: the Long-Term Bridge Performance Program, a 20-year study modeled after the Long-Term Pavement Performance Program; the Technology Deployment program, which includes the Innovative Pavement Research and Deployment provision, NHS pavement research, and demonstration projects on wood composite materials, asphalt reclamation, and alkali-silica reactivity;

Training and Education, which includes the National Highway Institute and the Local Technical Assistance Program; State Planning and Research; the International Highway Transportation Outreach Program; the Surface Transportation Environment and Planning Cooperative Research Program; the Transportation Research and Development Strategic Planning Program; the National Cooperative Freight Transportation Program; and the Future Strategic Highway Research Program, which focuses on the areas of renewal of aging highways, human factors related to highway safety, reducing highway congestion, and planning and designing new highway capacity.

B. Training and Education (23 USC 504)

Under SAFETEA-LU, the Training and Education program receives \$27 million dollars in each year from fiscal year 2005 through 2009. The program continues funding for the National Highway Institute, the Local Technical Assistance Program, and the Dwight D. Eisenhower Transportation Fellowship Program. These programs provide education and training to federal and state transportation workers and officials.

C. Bureau of Transportation Statistics (49 USC 111)

SAFETEA-LU funds this program at a total of \$27 million for each year over fiscal years 2005 through 2009. The Bureau of Transportation Statistics is charged with compiling and creating a variety of transportation statistics and documents. This work includes a long-term data collection program, an intermodal transportation database, the National Transportation Library, the National Transportation Atlas Database, and the Transportation Statistics Annual Report.

D. University Transportation Research (49 USC 5505 and 5506)

The University Transportation Research program is funded at \$77 million for each fiscal year from 2005 through 2009; \$70 million comes from the Highway Account of the Highway Trust Fund each fiscal year, and \$7 million comes from the Mass Transit Account of the Highway Trust Fund each fiscal year. Under SAFETEA-LU, University Transportation Centers (UTCs) are divided into several categories: national, regional, tier I, and tier II. Eight colleges and universities were also named as recipients of the funds made available from the Mass Transit Account of the Highway Trust Fund. The UTC program provides valuable research in a variety of fields, and also serves to train the next generation of transportation leaders.

E. Intelligent Transportation Systems (23 USC 512)

SAFETEA-LU funds the Intelligent Transportation Systems (ITS) program at \$110 million for each fiscal year from 2005 through 2009. The goal of the ITS program is to use intelligent systems and technologies to create a more efficient, safe, and user-friendly transportation system. SAFETEA-LU continues the requirement that the Secretary maintain a National Program Plan for ITS, and allows the Secretary to use an advisory committee to carry out the ITS program. ITS deployment ends in fiscal year 2005, but a strong ITS research program is continued for the life of the bill. Components of the ITS program include research and development, national architecture and standards, road weather research and development, and centers for surface transportation excellence.