

**Analysis of H.R.3 as Passed by the House on 03/10/05  
(RTA-000-1256A)**

The following is a six-year apportionment analysis developed by FHWA's Office of Legislation and Strategic Planning, based on H.R.3 as passed by the House on 3/10/05, the results of which are summarized in the attached RTA-000-1256A.xls file.

Sections 1834 (for Title I) and 5612 (for title V) provide that if the amount authorized for FY 2004 in H.R.3 is different from the amount made available in the Surface Transportation Extension Act of 2004, Part V, the amount made available in STEA shall prevail. Therefore, STEA04-Pt V values have been utilized where applicable in this analysis. The procedures used in the computation of the FY 2004 apportionments are documented in a separate analysis RTA-000-1047A.

The certified factors used for computing the apportionments for each of fiscal years 2005 through 2009 were updated to represent the **latest available data as of September 2004** (*Bridge factors as of February 2005*) that would be used by the FHWA for computing the FY 2005 apportionments upon enactment of a multi-year reauthorization bill.

**Minimum Guarantee:**

H.R.3 modified the basic structure of the TEA-21 Minimum Guarantee program. Five new formula programs (Highway Safety Improvement, Border Infrastructure, High Risk Rural Road Safety, Freight Intermodal Connectors, and Safe Routes to Schools) were added to the basic Minimum Guarantee computation. A new eligibility criterion was also added, along with a new Equity Adjustment computation and a new Scope Adjustment computation.

The new eligibility criterion requires the computation of the quotient obtained by dividing each State's share of funding under the regular formula programs by its 23 U.S.C. § 105(b) table share. If one or more States have a quotient of 1.3 or higher, the State with the highest quotient (i.e., the largest proportional discrepancy between its share of formula program funding and its table share) is excluded from all aspects of the basic Minimum Guarantee computation, and instead provided with an apportionment of \$1 million (the same as the minimum apportionment under the basic minimum Guarantee computation).

The Equity Adjustment ensures that a State does not lose funding as a result of the inclusion of High Priority Projects in the basic Minimum Guarantee computation. It also guarantees that States would achieve at least a 90.5% relative rate of return computed based on the apportionments (including the Equity Adjustment) and HTF-HA contributions of ALL States (without regard to the eligibility criterion above).

The Scope Adjustment shifts funds from the National Corridor Infrastructure Improvement Program to the Surface Transportation Program and re-computes the Minimum Guarantee until the "scope" in any particular year (defined as the total amount authorized for programs included in the Minimum Guarantee and Equity Adjustment computations divided by total Federal-aid Highway program contract authority) is at least 92.6%; the funds are then restored to the National Corridor Infrastructure Improvement Program.

Both the Minimum Guarantee and Equity Adjustment are authorized as "such sums as may be necessary". (Consequently, it is necessary to first compute the Minimum Guarantee and the Equity

Adjustment, in order to estimate the overall size of the bill). The “Scope Adjustment” is also computed iteratively, in conjunction with these other programs.

### **High Priority Projects:**

H.R.3 authorizes dollar levels for each of fiscal years 2005 through 2009 for the High Priority Projects. The language also specifies that a certain percentage of the total amount authorized for High Priority Projects be distributed in each of fiscal years 2005 through 2009. In creating this analysis, it was determined that in fiscal years 2006 and 2007, the amount to be distributed based on the percentages exceeded the amount authorized for that fiscal year. In fiscal years 2005, 2008, and 2009, the amount authorized for that fiscal year exceeded the amount to be distributed based on the percentages. In those years where the dollar authorizations were insufficient to cover the percentage authorizations, the funding was proportionately reduced to the level of the dollar authorizations. Note that the total amount authorized in H.R.3 for HPP was \$13,989,997 more than the sum of the projects designated in H.R.3 (as computed by the FHWA); the remainder is shown as “undistributed” in the tables.

### **Highway Safety Improvement Program:**

H.R. 3 includes a new Safety Program, to be split 2/3 for 23 USC 152 (Hazard Elimination) and 1/3 for 23 USC 130 (Rail-Highway Crossing). The Hazard Elimination portion would be distributed to the States via the formula used to apportion funds under the Surface Transportation Program as outlined in current law (25% Federal-aid Lane Miles; 40% Federal-aid Vehicle Miles, 35% Highway Trust Fund Contributions). The Sec. 130 portion would be distributed 50% through the STP formula as outlined in current law, with the remaining 50% distributed to the States based on their number of total rail-highway grade crossings. (Note that the two components of the Safety Program are shown separately in the summary output for this analysis.) H.R.3 as passed changes the effective date for a number of provisions related to FHWA's highway safety programs from 9/30/04 to 9/30/05. Changing the effective date would have the following impact (See section 1041(g) of HR 3):

1. In FY 2005, there would be both a 10% safety set-aside from STP (under 23 U.S.C. §133 (d)) and an authorization for the Highway Safety Improvement Program (HSIP);
2. The modifications to the formula for distributing Rail Crossing funds under Section 130 would not take effect until FY 2006. Thus, the vestigial formula remaining from before ISTEA would remain in effect for FY 2005. However, because this formula makes reference to sections of law that have been repealed, the formula cannot be executed; and
3. The modifications to the Highway Hazard Elimination program under Section 152 would not take effect until FY 2006; this includes the language that adds a formula for the program. Without the language, the program would be a discretionary program in FY 2005.

**This analysis assumes that the change in effective dates was a technical error and that the intent of the drafters was for the formula changes to be effective on 9/30/04.**

### **Technical Notes:**

This analysis was based primarily on apportionment factors representing the latest available data as of September 2004. As described below, the Highway Trust Fund contributions have been modified in the latter years to reflect the crediting to the Highway Account of two additional increments of revenues from gasohol taxes (2.5 and 5.2 cents). The analysis assumed the 1% Metro Planning takedown would apply only to those programs that it applies to under current law, and did not extend the takedown to the five new formula programs. A 2% administrative takedown was applied to the Safe Roads to Schools program, and a 1.5% administrative takedown was applied to the Recreational Trails program, but no administrative takedown was applied to any other program. **In addition to the**

**existing TEA-21 dollar-based takedowns, H.R.3 adds several new dollar-based takedowns to the apportioned programs.**

**The factors used to apportion funds for the Highway Bridge Program were updated in February 2005 to take into account new information on State transfers.** The Surface Transportation Extension Act of 2004 allowed unobligated bridge funds (23 USC § 144) to be transferred without penalty. The Act goes on to say that the funds must be restored as soon as practicable upon enactment of a new highway bill. If any State does not restore these funds, then 23 U.S.C. § 144 would require that when the next National Bridge Inventory is completed and all needs have been assessed, the total needs figure for those States will be reduced by the amount which was transferred, which would affect the apportionment factors for the Highway Bridge Program. Several States did transfer bridge funds to other categories, but had not indicated as of September 30 whether the transfers were intended to be permanent or would be restored to their bridge accounts upon enactment of a new bill. All of these States have now clarified their intentions in this regard, and the apportionment factors have been revised accordingly.

The Surface Transportation Extension Act of 2004, Part V and the American Jobs Creation Act of 2004 [Public Law 108-357; 118 Stat. 1418] included provisions that would change the amount of revenue deposited into the Highway Account of the Highway Trust Fund per gallon of gasohol. The 2.5 cents per gallon of the gasohol tax previously retained by the General Fund was redirected to the Highway Account of the Highway Trust Fund retroactively, beginning October 1, 2003. Also, gasohol's partial exemption from the gas tax was eliminated effective January 1, 2005. Since Highway Account contributions are calculated based on revenue and gallonage data from prior years, there would normally be a lag between the timing of these tax changes and when they would begin to be reflected in the apportionment factors. The redirection of the 2.5 cent increment would begin to affect the apportionments starting in FY 2006, while the elimination of the partial exemption would begin to affect the apportionments starting in FY 2007. The HTF factors for FY 2008 and FY 2009 have also been modified to attribute combined gasoline/gasohol revenue using combined gasoline/gasohol gallonage, as tax revenue data for these different types of fuels will no longer be tracked separately once they are taxed at the same rate.

H.R.3 also includes a new Border Infrastructure Program, to be distributed among border States based on the following formula: 20% based on the total number of incoming commercial truck crossings through the land border ports of entry, 30% based on the total number of incoming personal vehicle and incoming bus crossings through the land border ports of entry, 25% based on the total weight of incoming cargo by commercial trucks that pass through land border ports of entry, and 25% based on the total number of land border ports of entry.

H.R. 3 also includes a new High Risk Rural Roads Safety Improvement program, to be distributed in the following manner: 33⅓% based on public road lane mileage for rural minor collectors and rural local roads, 33⅓% based on the population of areas other than urbanized areas, and 33⅓% based on total vehicle miles traveled on public roads.

H.R. 3 also includes a new Freight Intermodal Connectors program, to be distributed among the States based on the following formula: 33.3% based on the number of intermodal freight connectors (as identified in the most recent FHWA Intermodal Freight Connectors study), 33.3% based on Highway Trust Fund contributions attributable to commercial vehicles, and 33.4% based on the NHS program apportionment formula.

H.R. 3 also includes a new Safe Routes to School program, to be distributed among the States based on total student enrollment in primary and middle schools, with each State guaranteed a minimum apportionment of \$2,000,000.

**Guide to Tables**

The attached Excel file contains 11 tables. (The following list is based on the names on the tabs in the Excel spreadsheet, rather than the titles on the printed output.)

The “Return Summary” page compares 6-year funding for each State under this scenario with that under TEA-21. This table also includes each State’s relative rate of return on their contributions to the Highway Trust fund, as used in the Minimum Guarantee computation, and each State’s return as used in the Equity Adjustment computation.

The “Aggregate” page contains the 6-year total apportionments by program and State. This is followed by the “Average” page, which shows average annual values, and the “2004”, “2005”, “2006”, “2007”, “2008” and “2009” pages, which show the same information for individual years.

The “Annual Comp” page shows each State’s total apportionments by year, and compares them with their average annual apportionment under TEA-21. The “Quotient” Table shows the computation made as part of the Minimum Guarantee special rule.

<b>Equity Program &amp; Scope Adjustment Summary</b>						
	<b>Minimum Guarantee</b>		<b>Equity Adjustment</b>		<b>Scope Adjustment</b>	
	RTA-000-1256A	Minimum Rate of Return	RTA-000-1256A	Minimum Rate of Return	RTA-000-1256A	“Scope” Percent
2004	\$ 10.1 bil.	90.5%	N/A	N/A	N/A	N/A
2005	\$ 6.4 bil.	90.5%	\$ 2.0 bil.	90.5%	\$ 0.4 bil.	92.6%
2006	\$ 6.5 bil.	90.5%	\$ 1.8 bil.	90.5%	\$ 0.4 bil.	92.6%
2007	\$ 6.9 bil.	90.5%	\$ 1.7 bil.	90.5%	\$ 0.5 bil.	92.6%
2008	\$ 7.1 bil.	90.5%	\$ 1.7 bil.	90.5%	\$ 0.5 bil.	92.6%
2009	\$ 7.5 bil.	90.5%	\$ 1.6 bil.	90.5%	\$ 0.5 bil.	92.6%
<b>Total</b>	<b>\$ 44.4 bil.</b>		<b>\$ 9.0 bil.</b>		<b>\$ 2.3 bil.</b>	

**Findings**

It is estimated that in order to meet the requirements of the “Scope” Adjustment provision, it would be necessary to shift \$2.3 billion from the Corridor program to the STP program. (An equal amount of contract authority would subsequently be added back to the Corridor program).

The total required six-year cost of the Minimum Guarantee is estimated to be \$44.4 billion. The District of Columbia would qualify for the special rule in each of the five years, as it had the largest proportional discrepancy between its share of the formula programs (plus HPP) to its 23 USC 105(b) table share. Its quotients (1.43, 1.42, 1.41, 1.42, and 1.41 in FY 2005 through FY 2009, respectively) were the highest in each year, and exceeded the 1.30 threshold. Therefore, DC received \$1 million per year, and its apportionments and HTF contributions were not considered in the computation of the Minimum Guarantee (though they are considered in the computation of the Equity Adjustment).

Due to the way in which the Minimum Guarantee is structured, the State with the greatest proportional discrepancy between their share of funding from the formula programs and their share in the 23 USC 105(b) table winds up driving the required cost of the Minimum Guarantee. Under TEA-21, DC was

always the driving State. Under H.R.3 as passed, Vermont is predicted to be the driver in all but one of the five years, FY 2005, where Washington is predicted to be the driver.

The estimated total required five-year cost for the separate Equity Adjustment would be \$9.0 billion. Forty-five States would receive funding under this provision, to hold them harmless from the effects of including High Priority Projects in the Minimum Guarantee computation and/or to guarantee them a 90.5% rate of return.

The total Federal-aid Highway Program contract authority for H.R.3 as passed is estimated to be \$237.3 billion. This does NOT reflect the \$12 billion rescission of unobligated balances under Section 1839, which would reduce the net amount of new contract authority under the bill.

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