



Legislative Bulletin.....April 30, 2008

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H.R. 1195—To amend the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users to make technical corrections, and for other purposes

Summary of the Bill Under Consideration Today:

Total Number of New Government Programs: 0

Total Cost of Discretionary Authorizations: \$0

Effect on Revenue: \$0

Total Change in Mandatory Spending: A reduction of \$1 million in contract authority (a mandatory form of budgetary authority) over five years.

Total New State & Local Government Mandates: 0

Total New Private Sector Mandates: 0

Number of Bills Without Committee Reports: 0

Number of Reported Bills that Don't Cite Specific Clauses of Constitutional Authority: 1

H.R. 1195—To amend the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users to make technical corrections, and for other purposes — (*Oberstar, D-MN*)

Order of Business: H.R. 1195 is scheduled to be considered on Wednesday, April 30, 2008, under a motion to suspend the rules and pass the bill.

Summary: H.R. 1195 makes numerous changes to federal surface transportation programs authorized by SAFETEA-LU, the 2005 highway bill (P.L. 109-59). Below are the *highlights*:

- Amends approximately 500 earmarks included in SAFETEA-LU by either changing the definition of the project or increasing the amount of the earmark. The following is just a few of these changes:
 - Increases from \$800,000 to \$2.4 million, an earmark for a York County, PA intersection;
 - Increases from \$800,000 to \$1.6 million, an earmark to widen state road 80 in Hendry County, Florida;
 - Amends an earmark that provides \$20 million for a new American border plaza at the Blue Water Bridge near Port Huron, MI, by providing that \$7.4 million is for planning, design, and construction of the project, and \$12.6 million is for integrated highway realignment and grade separations to eliminate road blockages from NAFTA rail traffic;
 - Amends an earmark that provides \$10 million for I-80 improvements, to direct this money to “improvements to state road 312, Hammond;”
 - Increases from \$2.4 million to \$4.8 million, an earmark for the widening of Highway 92 in Kearney, Missouri; and
 - Amends an earmark for \$256,000 to “improve Bailie Street in Kentland, Indiana,” to be used for “biking and pedestrian trail construction in Kentland, Indiana.”
- Expands an earmark for the magnetic levitation technology program (MAGLEV), a mass transit program. Specifically, H.R. 1195 would provide \$45 million in FY 2008 and FY 2009—a total of \$90 million—of new **contract authority** (a mandatory form of budgetary authority for MAGLEV). By contrast, SAFETEA-LU provided \$90 million over four years in budget authority subject to appropriation. 50% of this funding is earmarked for a Nevada project and the rest for a project “east of the Mississippi.” For the portion of the funding that is earmarked to the Nevada project, H.R. 1195 extends the MAGLEV train route from Las Vegas, NV to Anaheim, CA. SAFETEA-LU originally provided for a shorter route from Las Vegas, NV to Primm, NV.
- Annually reduces core highway formula programs by 0.205% for FY 2008-2009 and transfers the contract authority to the future strategic highway research program (F-SHARP).
- Offsets the costs of the bill’s provisions by increasing the scheduled rescission of contract authority on September 30, 2009, under SAFETEA-LU, from \$8.593 billion to \$8.708 billion (an increase of \$115 million).
- Provides \$21 million in new contract authority for university transportation center research funding.
- Conveys the GSA Fleet Management Center to the Alaska Railroad Corporation and the retained interest in the St. Joseph Memorial Hall to the city of St. Joseph, Michigan.
- Amends the requirement that second-offense drunk drivers have their licenses revoked for one year (without states being subject to financial penalty) and instead, allows for

either a one year suspension *or* a 45 day suspension followed by a reinstatement period, so long as an ignition interlock device (breathalyzer) is installed on the individual's vehicle.

- States that the Federal Highway Administration's current application of the Buy America test—with regard to the policy only being applied to components or parts of a bridge project and not the entire bridge project—is inconsistent with congressional intent.
- Directs the Department of Justice to review allegations of impropriety regarding the Coconut Road earmark to determine if violations of federal criminal law took place.

Background: On August 10, 2005, the President signed the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU, P.L. 109-59) into law to provide \$286 billion over five years for all federal surface transportation programs. The bill also included over 6,300 member earmarks, representing 8% of the bill's overall funding and a substantial increase over the preceding transportation authorization bill's (TEA-21, 1998-2003) then-record level of 1,850 earmarks. Prior to that, there were 538 earmarks in the 1991 highway bill, 152 earmarks in the 1987 highway bill, and 10 earmarks in the 1982 highway bill. The highway trust fund is projected to have a negative balance of approximately \$3.2 billion in 2009.

Possible Conservative Concerns: Some conservatives may be concerned that H.R. 1195, though it does not result in a net increase to federal spending, is a missed opportunity to reduce the portion of federal highway funding that is earmarked. H.R. 1195 uses savings from rescissions to increase funding for some earmarks included in the 2005 highway bill, instead of using this savings to improve the balance of the Federal Highway Trust Fund. As Senator DeMint noted during Senate consideration of H.R. 1195:

“I know the case has been made that this technical corrections bill does not increase the overall amount, but as we went back through this and found numerous earmarks that were no longer needed or even wanted, instead of moving that money to savings, we moved it to earmarks, and new earmarks, and to add additional earmarks at a time when we need to be trying to save money to overcome the projected deficit. Congress needs to take a timeout and examine the country's infrastructure priorities instead of relying solely on Members of Congress transportation earmarks.”

Some conservatives may also be concerned that some provisions in this bill are not “technical corrections” at all, but instead increase funding levels for, or substantially revise the nature of, existing earmarks. For example, some conservatives have expressed opposition to H.R. 1195's expansion of the MAGLEV project. Opponents of the project argue that it will compete with a private company that is raising billions of dollars (without taxpayer support) to complete a high-speed rail route from Nevada to California. In addition, the price of a round-trip flight from Las Vegas to Los Angeles can cost as little as \$118 and takes only an hour and ten minutes, which may limit demand for the proposed MAGLEV route.

Administration Position: The [SAP](#) expresses opposition to several provisions included in H.R. 1195 and states in part:

“As amended the bill would not be a technical corrections bill, but would instead make substantial and harmful changes to current law.”

The SAP goes on to state:

“The Administration notes with strong concern that the majority of the bill is devoted to earmarks. The bill modifies hundreds of earmarks from a bill that passed in 2005, effectively creating new earmarks, including a stand-alone section that would provide mandatory funding for magnetically levitating rail. The presence of excessive earmarks in the 2005 bill created significant inefficiencies in the allocation of resources to fund transportation infrastructure. The effort through H.R. 1195 to modify these earmarks from an authorization that passed only three years ago is a further reflection of those inefficiencies. Therefore, the Administration urges that these provisions be removed from the bill.”

The SAP also argues that two other provisions should be removed from the bill since they are not of a technical nature, the changes to waiver provisions for the Buy America requirements and the repeal of idling reductions facilities at public rest areas in Interstate rights-of-way.

Committee Action: The bill was introduced on February 27, 2007, and referred to the House Committee on Transportation and Infrastructure, which held a mark-up and reported the bill by voice vote, as amended, on March 21, 2007. The bill went on to pass the House, under suspension of the rules, on March 26, 2007 by voice vote. The Senate passed the bill, with amendments, on April 17, 2008 by a vote of 88 to 2.

Cost to Taxpayer: According to CBO, the bill reduces contract authority by \$1 million over five years

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits? H.R. 1195 is being considered under a motion to suspend the rules and pass the bill. As a result, the bill technically does not have to include a list of all the earmarks (and the requesting member) or a statement that no earmarks are included. However, the House Committee Report states that “it is not clear if the definition of ‘congressional earmark’ under clause 9(d) of rule XXI applies to technical corrections to SAFETEA-LU projects because these technical corrections do not provide new budget authority for such projects. However, in the interests of full disclosure and transparency, the Committee has required Members of Congress to comply with all requirements of clause 9(d), 9(c), or 9(f) of rule XXI.” The Senate Environment and Public Works Committee also has a table listing all of these provisions (including the requesting Member), which can be found [here](#).

Constitutional Authority: The committee report cites constitutional authority in Article 1, Section 8 of the Constitution, but fails to cite a specific clause. However, House Rule XIII, Section 3(d)(1), requires that all committee reports contain “a statement citing the *specific* powers granted to Congress in the Constitution to enact the law proposed by the bill or joint resolution” [*emphasis added*].

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