

SAFETEA-LU

Safe, Accountable,
Flexible, Efficient
Transportation
Equity Act -
A Legacy for Users

A GUIDE TO TRANSIT-RELATED PROVISIONS



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This guide provides a brief summary of key transit and related provisions of the Safe, Accountable, Flexible, Efficient Transportation Equity Act - A Legacy for Users (SAFETEA-LU), which authorizes federal transit and highway programs through Fiscal Year (FY) 2009. The bill was signed into law by President Bush on August 10, 2005 (Public Law 109-59).

SAFETEA-LU builds on the success of two previous surface transportation authorization laws, the Intermodal Surface Transportation Efficiency Act (ISTEA; P.L. 102-240) and the Transportation Equity Act for the 21st Century (TEA 21; P.L. 105-178). Under it, the federal transit program structure remains largely the same, retaining formula programs that target federal investment to systems and communities based on need and capital investment programs that address special needs and projects. Nonetheless, as summarized in this guide, the new law makes a number of changes to existing programs and adds new ones.

SAFETEA-LU represents a hard-fought victory for the public transportation industry and is consistent with the key reauthorization goals adopted by APTA's Board of Directors in 2002: grow the program; maintain funding guarantees; and expedite program delivery.

The new bill meets these goals. It:

- Provides a record level of federal transit investment, \$52.6 billion over 6 years, an increase of 46 percent over the amount guaranteed in TEA 21;
- Increases annual guaranteed transit funding from a level of \$7.2 billion in FY 2003 (the last year of TEA 21) to \$10.3 billion in FY 2009;
- Retains annual funding guarantees to ensure long-term funding stability; and
- Improves program delivery.

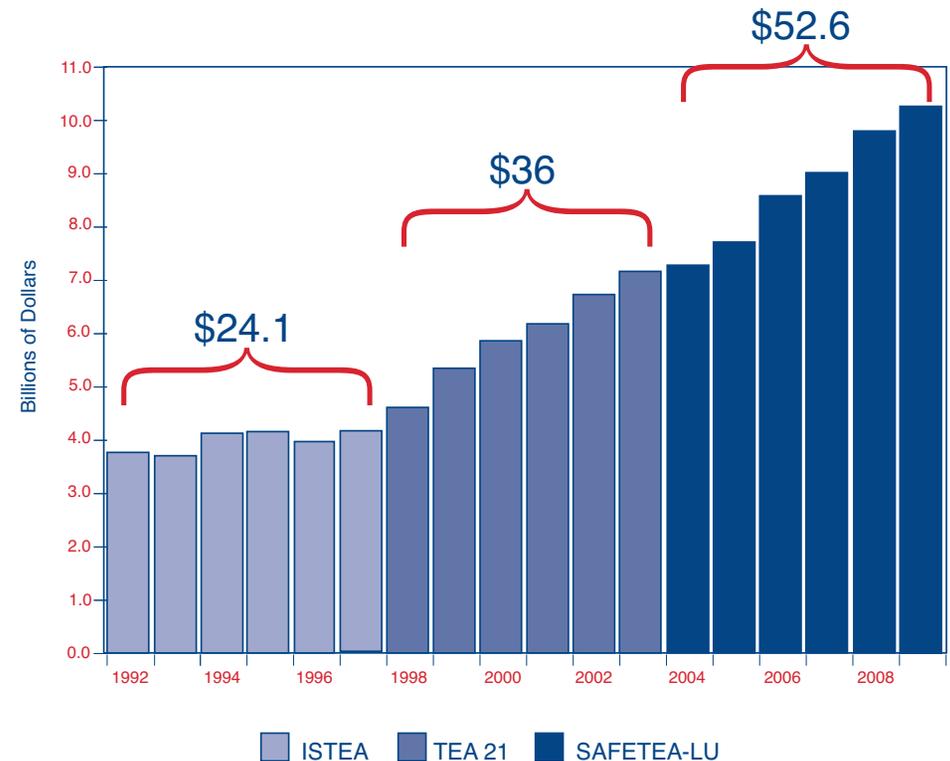
This outcome was possible because APTA member organizations worked together, and with other transportation interest groups, to make it happen. With great leadership provided by the APTA Executive Committee, Board of Directors and especially our legislative leadership – the Big 5: Rick Bacigalupo (Orange County), Mike Townes (Hampton Roads), Chris Boylan (New York), Dick Ruddell (Ft. Worth), and Alan Wulkan (Parsons Brinkerhoff) – coupled with APTA's Public Transportation Partnership for Tomorrow (PT)² resources we were able to carry that message forward more effectively than ever before. The results are described in this guide.

William W. Millar
President
 American Public Transportation Association
 September 2005

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Over two reauthorization cycles, federal public transportation investment has more than doubled.



Summary and Overview

Transit Provisions of SAFETEA-LU

On July 29, 2005, the U.S. House of Representatives and Senate approved by huge margins the Safe, Accountable, Flexible, Efficient Transportation Equity Act - A Legacy for Users (SAFETEA-LU). The bill provides \$286.4 billion, including \$52.6 billion for transit, through Fiscal Year (FY) 2009. The President signed the bill into law (Public Law (P.L.) 109-59) on August 10, 2005. The President's signature completed a legislative process that began in 2003, spanned two Congresses, and included two conferences and 12 extensions of TEA 21.

The provisions of SAFETEA-LU specifically fund the authorization of transit and highway funds for FY 2005 through FY 2009; funding for FY 2004 was authorized by the Surface Transportation Extension Act of 2004, Part IV, (P.L. 108-280). All amounts in this document refer to the entire SAFETEA-LU period and include FY 2004 funds authorized by the Surface Transportation Extension Act of 2004, Part IV. Provisions of SAFETEA-LU generally take effect at the beginning of FY 2006 (October 1, 2005), but the law incorporates FY 2005 funding provided in FY 2005 Appropriations law and extensions of authorizing law.

Before FY 2006, federal transit programs were funded with a mix of funds from both the Highway Trust Fund and the General Fund, which under congressional budgeting rules resulted in a fast "spend down" rate for Mass Transit Account funds. Beginning in FY 2006, SAFETEA-LU funds the New Starts, Research and University Research Centers programs and the Federal Transit Administration (FTA) Administrative Expenses from the General Fund, and all other programs from the Mass Transit Account of the Highway Trust Fund. As a result, Trust Fund spending under the transit program for the first time will be scored in the same way that spending is scored under the highway program, which has a significant and positive impact on the amount of funds that were able to be made available for the transit program under SAFETEA-LU.

Finally, the legislation provides guaranteed annual increases in investment for all transit programs through the use of discretionary spending offsets and language similar to that included in TEA 21.

SAFETEA-LU

Planning

PLANNING PROGRAMS, 49 U.S.C. 5305

A new section 5305 contains general provisions applicable to planning programs and continues the current division of planning authorization between Metropolitan Planning and Statewide Planning. The law requires the Federal Transit Administration and Federal Highway Administration to issue final planning regulations by August 10, 2006.

METROPOLITAN PLANNING, 49 U.S.C. 5303

All provisions for Metropolitan Planning are consolidated in a new section 5303. The requirement for separate transportation plans and transportation improvement programs is maintained. The Long Range Transportation Plan and the Transportation Improvement Program are to be updated every four years. Provisions regarding Transportation Management Areas (TMAs) are included in the metropolitan transportation planning section. Metropolitan Planning Organizations (MPOs) are encouraged to consult or coordinate with planning officials responsible for other types of planning activities affected by transportation. Safety and security are factors to be included in metropolitan planning.

In developing a Long Range Transportation Plan, MPOs will be required to include transit agencies in making funding estimates; consult with state and local agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation; and have a participation plan that provides reasonable opportunities for all parties comments. TMAs must be certified every four years. Program updates of state or MPO plans shall reflect these changes by July 1, 2007.

STATEWIDE PLANNING, 49 U.S.C. 5304

SAFETEA-LU consolidates statewide planning requirements in a new section 5304. States are allowed to enter into agreements for the purpose of planning cooperation and coordination for projects with multi-State implications. States must consider the economic vitality for rural areas as well as urbanized areas in statewide transportation planning. The Statewide Transportation Improvement Program (STIP) is to be updated every four years. Safety and security are factors to be included in statewide planning.

Formula Programs

Formula programs are those under which funds are apportioned by a formula specified in authorizing law. SAFETEA-LU moves several programs from other categories into a new “Formula and Bus Capital” category for authorization beginning in FY 2006. The new aggregation of programs is intended to allow all formula programs and the Bus Capital program to be funded from a single authorization from the Mass Transit Account.

URBANIZED AREA FORMULA PROGRAM, 49 U.S.C. 5307

SAFETEA-LU preserves the existing formula program and its distribution factors, but creates several new programs or tiers to distribute a portion of the funds to urbanized areas (UZAs). It establishes a new tier for transit intensive urbanized areas with fewer than 200,000 in population and extends the authority to use formula funds for operating purposes in urbanized areas reclassified as being larger than 200,000 in population under the 2000 Census. These changes are described in detail in the following sections. Urbanized Area Formula Program apportionments will include funds apportioned under a new Growing States and High Density States program described below. The transit enhancement program will be administered by certification, and a grantee must submit an annual report of such projects to the FTA.

SMALL TRANSIT INTENSIVE CITIES TIER, 49 U.S.C. 5336(j)

SAFETEA-LU includes APTA's proposal to create a tier in the Urbanized Area Formula program that would distribute funds to small UZAs with fewer than 200,000 population that provide transit service above a certain level. The new tier will be funded at 1 percent of all UZA formula funds annually beginning in FY 2006. The criteria are passenger miles traveled per vehicle revenue mile; passenger miles traveled per vehicle revenue hour; vehicle revenue miles per capita; vehicle revenue hours per capita; passenger miles traveled per capita; and passengers per capita.

OPERATING ASSISTANCE FOR SMALL UZAS, 49 U.S.C. 5307(b)(2)

Transit agencies in urbanized areas that grew from fewer than 200,000 in population under the 1990 Census to more than

200,000 in population under the 2000 Census may continue to use formula funds for operating expenses in FY 2005 at 100 percent of their FY 2002 apportionment, in FY 2006 at 50 percent of their FY 2002 apportionment, and in FY 2007 at 25 percent of their FY 2002 apportionment.

GROWING AND HIGH DENSITY STATES FORMULA FACTORS, 49 U.S.C 5340

New Growing States and High Density States Formula Factors distribute funds to the urbanized area formula and rural formula programs under new factors. One-half of the funds are made available under the Growing States factors and are apportioned by a formula based on state population forecasts for 15 years beyond the most recent Census; amounts apportioned for each state are then distributed between urbanized areas and rural areas based on the ratio of urban/rural population within each state. The High Density States factors distribute the other half of the funds to states with population densities in excess of 370 persons per square mile. These funds are apportioned only to urbanized areas within those states.

RURAL FORMULA PROGRAM, 49 U.S.C. 5311

SAFETEA-LU significantly increases funding for the rural program of the transit formula program. A new formula tier based on land area is established to address the needs of low-density states (20 percent of section 5311 funds are distributed through this tier). Indian tribes are added as eligible recipients, and a portion of funding is set aside each year for Indian tribes - \$8 million in FY 2006 and rising to \$15 million by FY 2009. Rural transit systems receiving formula funds will be required to report data to the National Transit Database. The sliding scale federal match under the federal highway program for states with a high percentage of federal lands is applicable under the section 5311 program. The current practice of requiring the Secretary of Labor to use a special warranty for section 5333 employee protective arrangements (formerly known as section 13(c)) is now codified in law. The Rural Transportation Assistance Program (RTAP) is funded with a 2 percent set aside of the Rural Formula program rather than from the Research program as under current law. Up to 15 percent of such funds can be used by FTA to carry out national projects. Rural Formula program apportionments will include funds apportioned from the Growing States program.

TRANSIT ON INDIAN RESERVATIONS, 49 U.S.C. 5311(c)

Indian tribes are added as eligible recipients for rural formula funds, and a portion of rural formula funding is set aside each year for Indian tribes - \$8 million in FY 2006 and rising to \$15 million by FY 2009.

ELDERLY INDIVIDUALS AND INDIVIDUALS WITH DISABILITIES PROGRAM, 49 U.S.C. 5310

SAFETEA-LU maintains the current program for special needs of elderly individuals and individuals with disabilities. Because of strong interest in extending the authority to use section 5310 grant funds for operating assistance, a new seven-state pilot program is established for fiscal years 2006 through 2009 to determine whether expanded authority to use up to 33 percent of the funds apportioned under section 5310 for operating costs improves services to elderly individuals and individuals with disabilities. Four of the states in the pilot program are specified in law – Wisconsin, Alaska, Minnesota, and Oregon – along with three other states to be selected by the Secretary.

NEW FREEDOM PROGRAM, 49 U.S.C. 5317

A new program called the New Freedom Program will provide formula funding for new transportation services and public transportation alternatives beyond those required by ADA to assist persons with disabilities. The New Freedom Program will be apportioned using a formula based on the disabled population in a state, with 60 percent of the funds apportioned to urbanized areas with populations larger than 200,000, 20 percent to states for use in urbanized areas of fewer than 200,000, and 20 percent to states for use in rural areas. Funds will be made available to transit systems and the states. The program contains language mandating coordination of transportation services with other federal human service programs. The law's legislative history specifies that employee protective arrangements under section 5333 (formerly known as section 13(c)) do not apply to this new program.

JOB ACCESS AND REVERSE COMMUTE (JARC) PROGRAM, 49 U.S.C. 5316

The JARC program is changed to become a formula program rather than the existing competitive discretionary grants program. The formula is based on ratios involving the number of eligible low-income and welfare recipients with 60 percent of funds going to urban areas with more than 200,000 population, 20 percent for urban areas with fewer than 200,000 population, and 20 percent to rural areas. SAFETEA-LU contains report language directing the FTA to continue its practice of providing maximum flexibility to job access projects designed to meet the needs of individuals who are not effectively served by public transportation. Coordination is required between private, non-profit, and public transportation providers and other federal programs in the JARC program, the New Freedom Program, and the Elderly and Disabled program.

Capital Investment programs provide funds for transit capital projects that meet specific criteria either by allocation where the project is named or by apportionment under a formula. Capital Investment Projects include the New Starts, Fixed Guideway Modernization, and Bus and Bus Facilities programs. For authorization of amounts for SAFETEA-LU, however, Fixed Guideway Modernization and Bus and Bus Capital programs are included under authorizations for Formula and Bus Capital Programs beginning in FY 2006.

NEW STARTS PROGRAM, 49 U.S.C. 5309

SAFETEA-LU does not change the basic New Starts program or the current federal share of 80 percent. A new Small Starts Program is created for smaller projects with a federal share of less than \$75 million (see below).

The current three-level rating system for New Starts is replaced by a five-level system - High, Medium High, Medium, Medium-Low, Low. Economic development/land use is explicitly added to the project justification criteria. A grantee will be allowed to keep a portion of the cost savings when projects are completed under budget. A higher than requested federal share can be provided for projects which keep cost and ridership estimates within 10 percent of the forecasts

Capital Investment Programs

SAFETEA-LU FEDERAL TRANSIT PROGRAM AUTHORIZATION LEVELS

| PROGRAM | FY 2004 (Millions) | FY 2005 (Millions) | FY 2006 (Millions) | FY 2007 (Millions) | FY 2008 (Millions) | FY 2009 (Millions) | Six-Year Total (Millions) |
|---|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|---------------------------------|
| Total All Programs | \$7,309.0 | \$7,646.3 | \$8,622.9 | \$8,974.8 | \$9,730.9 | \$10,338.1 | \$52,622.0 |
| Formula Programs Total | 3,964.0 | 4,123.9 | 4,671.7 | 4,860.3 | 5,268.1 | 5,596.6 | 28,484.6 |
| § 5307 Urbanized Area | 3,445.9 | 3,593.2 | 3,466.7 | 3,606.2 | 3,910.8 | 4,160.4 | 22,183.2 |
| § 5340 Growing States and High Density States | — | — | 388.0 | 404.0 | 438.0 | 465.0 | 1,695.0 |
| § 5311 Rural Area | 240.6 | 250.9 | 388.0 | 404.0 | 438.0 | 465.0 | 2,186.5 |
| § 5310 Elderly and Disabled | 90.7 | 94.5 | 112.0 | 117.0 | 127.0 | 133.5 | 674.7 |
| § 5317 New Freedom | — | — | 78.0 | 81.0 | 87.5 | 92.5 | 339.0 |
| § 5338(a)(2)(C) Alaska Railroad | 4.8 | 4.8 | — | — | — | — | 10 |
| § 5308 Clean Fuels Formula | 50.0 | 49.6 | 43.0 | 45.0 | 49.0 | 51.5 | 288.1 |
| § 3038 Over-the Road Bus | 7.0 | 6.9 | 7.5 | 7.6 | 8.3 | 8.8 | 46.0 |
| § 5316 Job Access and Reverse Commute | 125.0 | 124.0 | 138.0 | 144.0 | 156.0 | 164.5 | 851.5 |
| § 5320 Alternative Transportation in Parks | — | — | 22.0 | 23.0 | 25.0 | 26.9 | 96.9 |
| § 5335 Reports and Audits | — | — | 3.5 | 3.5 | 3.5 | 3.5 | 14.0 |
| § 5339 Alternatives Analysis | — | — | 25.0 | 25.0 | 25.0 | 25.0 | 100.0 |
| § 5309 Capital Investment Programs Total | 3,137.5 | 3,312.1 | 3,716.3 | 3,869.5 | 4,197.8 | 4,459.8 | 22,692.9 |
| Fixed-Guideway Modernization | 1,206.5 | 1,204.7 | 1,391.0 | 1,448.0 | 1,570.0 | 1,666.5 | 8,486.7 |
| New Starts Total | 1,323.8 | 1,437.8 | 1,503.0 | 1,566.0 | 1,700.0 | 1,809.3 | 9,339.9 |
| <i>New Starts Less Than \$75 Million</i> | — | — | — | 200.0 | 200.0 | 200.0 | 600.0 |
| <i>New Starts \$75 Million or More</i> | — | — | — | 1,366.0 | 1,500.0 | 1,609.3 | 4,475.3 |
| Bus and Bus Facilities | 607.2 | 669.6 | 822.3 | 855.5 | 927.8 | 984.0 | 4,866.3 |
| Planning Total | 73.0 | 72.4 | 95.0 | 99.0 | 107.0 | 113.5 | 559.9 |
| § 5305(d) Metropolitan Planning | 60.4 | 59.9 | 78.6 | 81.9 | 88.5 | 93.9 | 463.2 |
| § 5305(e) State Planning | 12.6 | 12.5 | 16.4 | 17.1 | 18.5 | 19.6 | 96.8 |
| Research Total | 59.0 | 60.6 | 58.0 | 61.0 | 65.5 | 69.8 | 373.8 |
| § 5311(b)(2) RTAP | 5.3 | 5.2 | In § 5311 | In § 5311 | In § 5311 | In § 5311 | 10.5 |
| § 5313(a) TCRP | 8.3 | 8.2 | 9.0 | 9.3 | 9.6 | 10.0 | 54.3 |
| § 5315 National Transit Inst. | 4.0 | 4.0 | 4.3 | 4.3 | 4.3 | 4.3 | 25.2 |
| § 5314 National Research | 35.5 | 37.2 | 37.7 | 40.4 | 44.6 | 48.5 | 243.9 |
| § 5506 University Centers | 6.0 | 6.0 | 7.0 | 7.0 | 7.0 | 7.0 | 40.0 |
| FTA Operations | 75.5 | 77.4 | 82.0 | 85.0 | 92.5 | 98.5 | 510.9 |

used as basis for establishing locally preferred alternative. FTA is to implement New Start Program changes by a rulemaking. There is a pilot program to demonstrate the benefits of public/private partnerships.

The FTA annually is to issue a contractor performance assessment report to analyze the consistency and accuracy of cost and ridership estimates made by contractors developing major capital investments. The FTA may take into consideration extenuating factors outside the control of a contractor in making its evaluations. The New Starts program is identified as section 5309(m)(1)(A) in FY 2005 and section 5309(m)(2)(A) beginning in FY 2006. In prior years it had been identified as section 5309(m)(1)(B).

The law includes four categories of earmarks: specific annual funding levels for projects that have Full Funding Grant Agreements; a listing without any funding amounts for projects authorized for final design and construction grants; a listing without any funding amounts for projects authorized for preliminary engineering grants; and a listing with maximum amounts during the SAFETEA-LU period for additional projects not categorized by their status.

Also under the New Starts program, \$20 million is made available annually for ferry boats or related facilities for projects in Alaska and Hawaii.

SMALL STARTS PROGRAM, 49 U.S.C. 5309(e)

A new "Small Starts" (Capital Investment Grants Less Than \$75,000,000) program would provide funding for smaller projects with a federal New Starts share of less than \$75 million, including streetcar, trolley, bus rapid transit (if a substantial portion of the project operates in a separate right of way in a defined corridor dedicated for public transit use during peak hours or it has other characteristics of a fixed guideway system), and commuter rail projects. Small Starts projects may not total more than \$250 million. Simplified procedures and criteria apply to the program. The program will be funded with a \$200 million takedown from the New Starts apportionment annually beginning in FY 2007.

ALTERNATIVES ANALYSIS, 49 U.S.C. 5339

A new Alternatives Analysis program provides \$25 million annually beginning in FY 2006 for new fixed guideway investment alternatives analyses. Earmarks are included for FY 2006 and FY 2007.

FIXED GUIDEWAY MODERNIZATION PROGRAM, 49 U.S.C. 5309

The Fixed Guideway Modernization program is unchanged. It is classified as a formula program for authorization in SAFETEA-LU but remains in the section 5309 Capital Investment program and is identified as section 5309(m)(1)(B) in FY 2005 and section 5309(m)(2)(B) beginning in FY 2006. In prior years it had been identified as section 5309(m)(1)(A). Fixed Guideway Modernization apportionment factors in section 5337 are not changed.

BUS AND BUS FACILITIES PROGRAM, 49 U.S.C. 5309

Bus and Bus Facilities is classified as a formula program for authorization in SAFETEA-LU but remains in the section 5309 Capital Investment program and is identified as section 5309(m)(1)(C) in FY 2005 and section 5309(m)(2)(C) beginning in FY 2006. SAFETEA-LU makes few changes to the program, but provides significant increases in funding. Some 600 earmarks are included in this section; these earmarks cover about half of the Bus and Bus Facilities program resources in each fiscal year through FY 2009. A new intermodal facilities program is established with a \$35 million annual set aside from the discretionary bus program. The intercity portion of intermodal terminals is eligible for funding under this program if the facility serves as a connector to public transportation. In addition, \$10 million is now available annually under the Bus Program for ferry boats or related terminals with the funds earmarked for specific projects.

Research

The research programs are generally unchanged. The Transit Cooperative Research Program grows from its current fixed amount of \$8.2 million a year to \$10 million in FY 2009. A number of studies and entities are funded from the national research program: a National Academy of Sciences study of 38 transit systems ability to accommodate evacuation in times of emergency; Center for Transit Oriented Development at \$1 million a year; transportation equity research program to assess transportation impacts on transit dependent at \$1 million a year; transit career ladder training program at \$1 million a year; pilot program for remote infrared audible signs \$500,000 per year; hydrogen fuel cell shuttle deployment demonstration project at \$800,000 each year for two years; human services transportation coordination at \$1.6 million per year; Portland streetcar prototype deployment at \$1 million per year; public transportation participation pilot program at \$1 million a year; transportation infrastructure and logistics research at \$500,000 a year for University of Alabama at Huntsville; National Bus Rapid Transit Institute at \$1.75 million a year for University of South Florida; ITS application at \$400,000 for Northern Kentucky University; ITS pilot project at \$465,000 for Ohio State; regional public safety training center at \$500,000 a year for Lehigh-Carbon Community College; transit security training facility at \$750,000 for Chester Community College; Small Urban and Rural Transit Center \$800,000 per year at North Dakota State University; advanced technology BRT at \$500,000 per year for Connecticut project; New Haven fuel cell-powered bus research at approximately \$500,000 a year; Center for Advanced Transportation Initiatives at approximately \$500,000 a year at Rutgers; New Jersey Institute of Technology TELUS program at approximately \$500,000 a year; Southern California regional transit training consortium pilot program at \$540,000 a year.

Other Programs

CLEAN FUELS PROGRAM, 49 U.S.C. 5308

The Clean Fuels grant program is reauthorized with some modifications. Grants would be provided for the purchase of clean fuels buses, including clean diesel vehicles (up to 25 percent of grants annually), in certain non-attainment areas and areas trying to maintain compliance with clean air standards. Grants are discretionary.

ALTERNATIVE TRANSPORTATION IN PARKS AND PUBLIC LANDS PROGRAM, 49 U.S.C. 5320

SAFETEA-LU establishes a new program to develop public transportation in National Parks, with the goal of improving mobility and reducing congestion and pollution. The Departments of Transportation and Interior will work cooperatively to develop and select capital or planning projects. Employee protective arrangements under section 5333 (formerly known as section 13(c)) do not apply to this new program.

PROJECT MANAGEMENT OVERSIGHT (PMO), 49 U.S.C. 5327

The takedown for Project Management Oversight is increased to 0.75 percent for section 5307 UZA Formula funds and to 1.0 percent for section 5309 Capital Investment programs. New 0.5 percent PMO takedowns will apply to section 5305 Planning, section 5310 Elderly Persons and Persons with Disabilities, and section 5320 Alternative Transportation in Parks and Public Lands programs. The 0.5 percent PMO takedown for section 5311 Rural funds remains the same. "Safety and security management" are added to project management and oversight review requirements.

NON-REGULATORY NOTICE AND COMMENT PERIOD, 49 U.S.C. 5334 (I)

The law adds a new section that requires FTA to subject non-regulatory substantive policy statements that impose a binding obligation on recipients to a 60-day public review notice and comment period.

CHARTER BUS, 49 U.S.C. 5323(d)

SAFETEA-LU permits the partial withholding of federal funds by the FTA in the case of a continuing pattern of violations of the charter or school bus law and regulations. Report language accompanying the bill calls for a negotiated rulemaking by the FTA to consider ways to improve the charter bus complaint and appeals process; improve the administration and enforcement of the charter bus regulation, including use of the internet to help communications; and to

Other Transit-Related Programs

consider whether there are potential limited conditions under which public transit agencies can provide community-based charter services directly to local governments and private non-profit agencies that would not otherwise be served in a cost-effective manner by private operators. Under a negotiated rulemaking, a balanced group representing public and private interests would meet with a representative of the FTA as part of a federally chartered advisory committee to negotiate the text of a proposed rule. Meetings are to be announced in the Federal Register and are open to the general public. If the group cannot agree on the text of a proposed rule, FTA would draft it.

EMPLOYEE PROTECTIVE ARRANGEMENTS, 49 U.S.C 5333 (FORMERLY KNOWN AS SECTION 13(c))

Employee protective arrangements, formerly known as section “13(c),” do not apply to two new programs created under the bill, the New Freedom and Alternative Transportation in Parks and Public Lands Programs. The bill codifies the Department of Labor (DOL) “Las Vegas” decision relating to contractor-to-contractor issues in cases involving buses as embodied in DOL letters dated September 21 and November 7, 1994. Further, the administrative special warranty for section 5311 programs is now codified in law and grants for purchase of like-kind equipment do not have to be referred to DOL prior to certification.

BUY AMERICA, 49 U.S.C. 5323(j)

Language is included in SAFETEA-LU requiring FTA to conduct a rulemaking on the Buy America program to clarify that the microprocessor waiver is limited to computers and similar devices; to define end product to ensure that major systems procurements are not used to circumvent Buy America and that such definition include a list of representative items subject to the Buy America requirements; provide for non-availability waivers after contract award; and to clarify that it is the certification submitted with a final offer that applies to a negotiated procurement.

BUS DEALERSHIP REQUIREMENT, 49 U.S.C. 5325(i)

The law provides that no state law requiring buses to be purchased through in-State dealers shall apply to vehicles purchased with a grant under the federal transit program.

CONTROLLED SUBSTANCES AND ALCOHOL MISUSE TESTING, 49 U.S.C. 5331

The law provides flexibility to permit a transit system to comply with one DOT modal drug and alcohol testing program rather than having to comply separately with different DOT modal drug and alcohol testing programs.

ELIGIBLE CAPITAL EXPENSES, 49 U.S.C. 5302(a)(1)

The definition of an eligible capital project for mass transportation improvement is expanded by adding construction, renovation, and improvement of intercity bus and intercity rail stations and terminals. New eligible capital project categories are added: crime prevention and security including security and emergency response plans, chemical and biological agent detection, emergency response drills, and security training for employees; establishing a debt service reserve; and mobility management. Mobility management is described as “projects for improving coordination among public transportation and other transportation service providers”, and could include, among other things, the employment of personnel to coordinate the full array of transportation options through a clearinghouse function. Further, a transit system may allow the incidental use of federally funded alternative fueling facilities and equipment by nontransit public entities and private entities so long as funds earned are used for transit purposes.

USE OF ADVERTISING AND SOCIAL SERVICE CONTRACT REVENUE TOWARDS LOCAL MATCH

The legislation allows additional funds to be used for the local match. Advertising and concession revenues can be used to match Urbanized Area Formula funds. Amounts appropriated or otherwise made available to a department or agency of the Government (other than the Department of Transportation) that are eligible to be expended for transportation can be used to match Elderly and Disabled, Rural, JARC, and New Freedom grants. Funds from section 403(a)(5)(C)(vii) of the Social Security Act (42 U.S.C. 603(a)(5)(C)(vii)) can be used to match Urbanized Area Formula, Elderly and Disabled, Rural, JARC, and New Freedom grants. Amounts received under a service agreement with a state or local social service agency or private social service organization can be used to match Elderly and Disabled, Rural, JARC, and New Freedom grants. Proceeds from the issuance of revenue bonds can be used to match Urbanized Area Formula and Capital Investment grants for capital projects.

Selected Highway Provisions

TRANSIT PASS COMMUTE BENEFIT, SECTION 3049 OF SAFETEA-LU

The law preserves the current limitation for qualified transportation fringe benefits for transit and vanpools at \$105 per month (with indexing for inflation). It also codifies Executive Order #13150 which requires federal agencies in the Washington, D.C. National Capital Region to provide employees with tax-free transit benefits to cover commuting costs up to the maximum allowed by law. It extends benefits, beyond those provided in the Executive Order, to federal employees in the National Capital Region who work for the legislative and judicial branches or for independent agencies.

VOLUMETRIC EXCISE TAX CREDIT FOR ALTERNATIVE FUELS, SECTION 11113 OF TITLE XI OF SAFETEA-LU

Two new excise tax credits are made available under SAFTEA-LU's tax title for alternative fuels and alternative fuel mixtures used in highway-use vehicles. The law provides a 50 cent per gallon tax credit for alternative fuel or gasoline gallon equivalents for non liquid alternative fuels. While this tax credit would be provided to the producer of such fuels, some of the benefit of the credit may accrue to the users, including transit and other municipal agencies that are not taxing entities.

The following selected sections of the highway provisions are included because of their significance to the federal transit program but represent only a small portion of the highway provisions in SAFETEA-LU.

CONGESTION MITIGATION AND AIR QUALITY IMPROVEMENT (CMAQ), 23 U.S.C. 149

A new requirement is established that states and MPOs give priority consideration to projects and programs for diesel retrofits, other cost-effective emission reduction activities, and cost-effective congestion mitigation activities that provide air quality benefits. Also established is a requirement to evaluate and assess a representative sample of CMAQ projects to determine the direct and indirect

impact of the projects on air quality and congestion levels; and ensure the effective implementation of the program. The Environmental Protection Agency (EPA) is to publish a list of approved diesel retrofit technologies and the emission reduction effectiveness and cost-effectiveness of the technologies.

BUS AXLE WEIGHT EXEMPTION, SECTION 1023(h)(1) OF THE INTERMODAL SURFACE TRANSPORTATION EFFICIENCY ACT OF 1991

The current exemption from axle-weight limitations for transit buses and over-the-road buses is extended through September 30, 2009.

FERRY BOATS AND TERMINALS, 23 U.S.C. 149

A new program for the construction of ferry boats and terminals is established, funded at \$38 million in FY 2005 and increasing annually to \$67 million by FY 2009. Additional sums as may be necessary are provided. A national ferry database will be established. Included in program priorities are ferries that carry the greatest number of passengers in passenger-only service.

TOLLING PROVISIONS, SECTION 1604 OF SAFETEA-LU AND 23 U.S.C. 166

An express lane demonstration program is established which permits excess revenues to be used for transit purposes eligible under Title 49. SAFETEA-LU gives states more flexibility to use road pricing strategies as a congestion management and transportation finance tool. States are given latitude in the operation of High Occupancy Toll (HOT) lanes, allowing priority consideration for use of toll revenues for alternatives (such as transit) to single occupant vehicles. In addition, the Federal Highway Administration's Value Pricing Pilot Program is continued and enhanced along with several other pilot and demonstration programs to encourage congestion strategies aimed at air quality, energy conservation and efficiency. New provisions allow state/local governments expanded use of "toll credits" for local match for federal highway and transit projects - revenues from toll facilities may be counted as local matching funds regardless of whether or not federal funds were or are used for the toll facility.

TRANSPORTATION, COMMUNITY, AND SYSTEM PRESERVATION PROGRAM, SECTION 1117 OF SAFETEA-LU

Funding for the Federal Highway Administration Transportation, Community, and System Preservation Program (TCSP) is increased from the current \$25 million annual amount to a new annual level of \$61 million. Transit and highway projects that enhance transit-oriented development are eligible, along with other broad categories of projects that improve the efficiency of the transportation system and reduce its impacts on the environment.

NATIONAL SURFACE TRANSPORTATION POLICY AND REVENUE STUDY COMMISSION, SECTION 1909 OF TITLE I OF SAFETEA-LU

A new commission will be created to study and report on the current condition and future needs of the surface transportation system, and potential funding to meet such needs. It specifically identifies public transportation infrastructure and facilities as part of the surface transportation system to be considered, and directs the commission to consider needs related to emergency preparedness and evacuation using the system and alternatives to address environmental concerns associated with the system.

NATIONAL SURFACE TRANSPORTATION INFRASTRUCTURE FINANCING COMMISSION, SECTION 1142 OF TITLE XI OF SAFETEA-LU

Another commission will be created to complete a study of the Highway Trust Fund revenues and the impacts of these revenues for future highway and transit needs. Among the considerations will be alternative approaches to generating revenues for the Highway Trust Fund.

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